



# DLS

DIVISION OF LOCAL SERVICES  
MA DEPARTMENT OF REVENUE

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## Informational Guideline Release

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Bureau of Municipal Finance Law  
Informational Guideline Release (IGR) No. 19-14  
December, 2019

**(Supersedes IGR No. 00-209, IGR 01-207, IGR 02-208  
And Prior Inconsistent Written Statements)**

### **COMMUNITY PRESERVATION FUND**

**(General Laws c. 44B)**

This Informational Guideline Release (IGR) explains to local officials the procedures and requirements for establishing a special fund that may be appropriated and spent for certain open space, recreational, historic resource and affordable housing purposes.

Topical Index Key:

Borrowing  
Collection Procedures  
Special Funds  
Tax Bills

Distribution:

Assessors  
Collectors  
Treasurers  
Clerks  
Accountants and Auditors  
Mayors/Selectmen  
City/Town Managers/Exec. Secretaries  
Finance Directors  
City/Town Councils  
City Solicitors/Town Counsels

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**COMMUNITY PRESERVATION FUND**

**[\(General Laws c. 44B\)](#)**

**SUMMARY:**

These updated guidelines explain the municipal finance provisions of the Community Preservation Act (CPA), which is found in the General Laws at [c. 44B](#). Under the CPA, any city or town may establish a special “Community Preservation Fund” (CP Fund) that may be appropriated and spent for certain open space (including recreation), historic resource and community housing purposes.

To establish a CP Fund, a community must accept [G.L. c. 44B §§ 3-7](#). There are two alternative methods of acceptance: through [G.L. c. 44B, § 3\(b\)](#) or [G.L. c. 44B, § 3\(b½\)](#). Acceptance requires majority approval of both the community’s legislative body and voters at the next regular municipal or state election. In both cases, the community adopts a property tax surcharge and the surcharge revenue is credited to the CP Fund. A community that accepts the CPA through § 3(b½), however, may also appropriate other municipal revenue to the CP Fund. Under either acceptance method, the total local contribution (surcharge revenue plus other municipal revenue credited to the CP Fund) cannot exceed three percent of the tax levy. As an alternative to legislative body approval, a petition may be submitted for placing the acceptance on the ballot. [G.L. c. 44B, § 3\(h\)](#).

In addition to local revenues, a second source of revenue for the CP Fund is annual distributions received from the state “Massachusetts Community Preservation Trust Fund,” also created under the act. Monies distributed from the state trust fund come primarily from surcharges on fees charged for recording various documents with the Registry of Deeds or Land Court.

A community accepting the CPA must establish a Community Preservation Committee (CPC) to make annual recommendations to its legislative body regarding expenditures from the CP Fund. In each fiscal year, the community must spend or reserve at least 10 percent of the annual CP Fund revenues for each of the CPA’s community preservation purposes: open space (including recreation), historic resources and community housing.

**BUREAU OF MUNICIPAL FINANCE LAW    PATRICIA HUNT, CHIEF**

## **GUIDELINES:**

### **I. COMMUNITY PRESERVATION ACT ADOPTION**

#### **A. Acceptance by Legislative Body and Electorate**

Acceptance requires approval of both the legislative body of the city or town and the electorate at the next regular municipal or state election. [G.L. c. 44B, § 3](#).

##### **1. Legislative Body Action**

A majority of the legislative body of the city or town must first approve a specific proposal to present to the voters. The legislative body is defined as town meeting, town council, city council, board of aldermen or other body with the power to approve budgets, authorize debt and adopt by-laws or ordinances for the community. [G.L. c. 44B, § 2](#).

##### **a. Required Action**

The legislative body of the city or town must approve a specific proposal to present to the voters under either [G.L. c. 44B, § 3\(b\)](#) or [G.L. c. 44B, § 3\(b½\)](#).

- (1) The legislative body accepts G.L. c. 44B, §§ 3-7 by approving a surcharge up to three percent of the real estate tax levy. [G.L. c. 44B, § 3\(b\)](#);

or

- (2) The legislative body accepts G.L. c. 44B, §§ 3-7 by approving a surcharge of not less than one percent and the appropriation of additional revenue from other municipal sources up to two percent of the real estate tax levy. When added together, the surcharge and additional municipal revenue cannot exceed three percent of the real estate tax levy. [G.L. c. 44B, § 3\(b½\)](#). (See Section III below for more information regarding this alternative.)

##### **b. Discretionary Action**

The legislative body may include any or all of the following surcharge exemptions in the proposal to be presented to the voters. [G.L. c. 44B, § 3\(e\)](#):

- (1) An exemption for property owned and occupied as a domicile by a person who would qualify for low income housing or low or moderate income senior housing in the community. [G.L. c. 44B, § 3\(e\)\(1\)](#).

- (2) An exemption for Class Three, Commercial, and Class Four, Industrial, property if the community annually adopts a higher tax rate for those classes. [G.L. c. 44B, § 3\(e\)\(2\)](#).
- (3) An exemption for \$100,000 of the assessed valuation of Class One, Residential, parcels. [G.L. c. 44B, § 3\(e\)\(3\)](#).
- (4) An exemption for \$100,000 of the assessed valuation of Class Three, Commercial, and Class Four, Industrial, parcels. [G.L. c. 44B, § 3\(e\)\(4\)](#).

c. Timing

After the legislative body accepts the CPA and adopts a surcharge plan, the acceptance referendum must be placed before the voters at the next regularly scheduled municipal or state election where the municipality can comply with applicable referendum notice requirements of [G.L. c. 54, § 42C](#). [G.L. c. 44B, § 3\(g\)](#).

For example, the legislative body accepts the CPA and adopts a surcharge at its meeting held on May 1. The next regularly scheduled municipal election is May 20 and the next regularly scheduled state election is November 2. Because the next regularly scheduled municipal election is less than 35 days after the legislative body's acceptance of the CPA, the acceptance referendum cannot be placed on the municipal election ballot because it is not possible to give the city or town clerk the required 35 days advance notice of the referendum. In this case, the acceptance referendum must be placed before the voters at the next regularly scheduled state election because the city or town is able to give the secretary of state the required 60 days advance notice of the referendum.

2. Voter Action

a. Question Form

The referendum question presented to the voters must read as follows:

Shall this (city or town) accept sections 3 to 7, inclusive of chapter 44B of the General Laws, as approved by its legislative body, a summary of which appears below?

b. Question Summary

A fair, concise summary and purpose of the CPA provisions that are the subject of the referendum must appear underneath the question. The summary is to be prepared by the community's city solicitor or town counsel and must include the surcharge percentage approved by the legislative body. It should also include any exemptions adopted by the



legislative body and state whether the CPA is adopted pursuant to [G.L. c 44B, § 3\(b\)](#) or [G.L. c 44B, § 3\(b½\)](#) and, if § 3(b½), the maximum percentage of additional municipal revenues that may be appropriated to the CP Fund pursuant to § 3(b½). It should also state the effective fiscal year of the acceptance and any other relevant information. (See the Secretary of the Commonwealth [Elections Division](#) website for additional information on the ballot question and a sample “fair and concise summary.” See also CPA Acceptance – Sample Fair and Concise Summary, Attachment I-1 below.)

c. Question Approval

The question is approved and the statute accepted if a majority of the voters voting on the referendum question vote “yes.”

(See CPA Acceptance – Sample Language, Attachment I-1 below.)

**B. Acceptance by Petition**

An alternative acceptance procedure may be used if the legislative body of the city or town does not accept the CPA and approve a surcharge amount at least 90 days before a regular municipal, or 120 days before a regular state, election. [G.L. c 44B, § 3\(h\)](#).

Under the alternative procedure, the voters of a city or town may file a petition to have a referendum question placed on the ballot seeking acceptance of the CPA, approval of a specific surcharge percentage and approval of any allowable exemptions. The petition must be signed by at least five percent of the registered voters of the city or town and filed with the local board of registrars of voters, board of election commissioners or election commission. The petition must state the surcharge percentage and any exemptions. It should also state whether the CPA is adopted pursuant to [G.L. c 44B, § 3\(b\)](#) or [G.L. c 44B, § 3\(b½\)](#) and, if § 3(b½), the maximum percentage of additional municipal revenues that may be appropriated to the CP Fund pursuant to § 3(b½). It should state the effective date of the acceptance and other relevant information. The board or commission must certify the signatures within seven days of filing. Although the CPA does not provide a format for a ballot question proposed by petition, the question should be in substantially the same form as the ballot question after approval by the legislative body and the city solicitor or town counsel should prepare a fair and concise summary to be printed below the question.

The city or town clerk or secretary of state must then place the question on the ballot at the next regular municipal or state election held after certain minimum time periods. If the question is to appear on a municipal election ballot, the election must be held at least 35 days after the certification of the signatures. For questions appearing on a state election ballot, at least 60 days must elapse before the election can occur. (For additional information on the process of accepting the CPA by petition and sample language for a petition and question, see the Secretary of the Commonwealth [Elections Division](#) website.)

(See CPA Acceptance – Sample Language, Attachment I-1 below.)

**C. Effective Date**

The effective date of acceptance will be:

- The next (or later) fiscal year following the election as expressly stated in the vote.
- The next fiscal year following the election if the vote does not express an effective date.
- The current fiscal year of the election if:
  - Expressly stated in the vote and
  - The tax rate has not been set at the time of the vote.

**D. Notification of Acceptance**

The city or town clerk must notify the DLS Data Analytics and Resources Bureau (DARB) if the statute is accepted. The notification form is available on the [DLS website](#). To receive distributions from State Trust Fund, acceptance must be reported not later than September 15 of the fiscal year following the close of the fiscal year surcharge first assessed.

**E. Amended Acceptance**

At any time after imposition of the surcharge, a city or town may amend its acceptance of the CPA under [G.L. c. 44B, § 16\(a\)](#). Amendment is by majority vote of the legislative body and by referendum.

A city or town may amend the surcharge percentage and exemptions. In addition, if a city or town has accepted G.L. c. 44B, §§ 3-7 under § 3(b) and wishes to appropriate additional municipal revenue to the CP Fund, it must use the amended acceptance process under [G.L. c. 44B, § 16\(a\)](#) and adopt the alternative funding provision set forth in [G.L. c. 44B, § 3\(b\)½](#).

The amendment referendum question should be in a form similar to the CPA acceptance referendum question after approval by the legislative body and must include a fair and concise summary prepared by the city solicitor or town counsel printed below the question. (See Section I.A.2 above.)

The effective date of the amendment is determined in the same manner as the effective date of the original acceptance.

(See CPA Surcharge Rate or Exemption Amendment – Sample Language, Attachment I-2 below.)

**F. Revocation of Acceptance**

Acceptance may be revoked, but the city or town must wait until at least five years after the referendum passes to do so. Revocation is in the same manner as acceptance. If the

city or town accepted G.L. c. 44B, §§ 3-7 by majority vote of the legislative body and by referendum, revocation is by majority vote of the legislative body and by referendum. If the acceptance was by petition ([G.L. c. 44B, § 3\(h\)](#)), then revocation is by petition. The effective date of the revocation is determined in the same manner as the effective date of original acceptance and amendments. The surcharge continues to be assessed, however, until all obligations incurred and funded by the city or town from CP Fund revenues are paid. [G.L. c. 44B, § 16\(b\)](#). (See Section VI-A-3 below for Wind-down of Fund on CPA Revocation.)

Reducing a surcharge to a de minimis amount (for example 0.1 percent) is tantamount to a revocation and the procedures for revocation must be followed.

(See CPA Revocation – Sample Language, Attachment I-3 below.)

### **G. Simultaneous Revocation and Amendment Questions**

Both revocation and surcharge amendment questions may be presented at the same election. If both are approved, the CPA is revoked but the amended rate applies to any surcharges that must be assessed to wind down the fund. If the revocation is rejected, but the amendment approved, the amended rate applies to future surcharges.

## **II. COMMUNITY PRESERVATION SURCHARGE**

In a city or town that accepts [G.L. c. 44B, §§ 3-7](#), a community preservation surcharge is assessed on the municipality's real estate taxes. (See Section I-C above for effective date of acceptance.) Taxes assessed on personal property, or by water, fire or other tax levying districts within the municipality, are not subject to the surcharge. Amounts generated by the surcharge are not subject to the levy limitations of Proposition 2½.

### **A. Surcharge Assessment and Billing**

The surcharge is imposed on every type of real estate tax assessment made by the community, including all preliminary, actual, omitted, revised and supplemental assessments. The surcharge must be displayed as a separate item on the tax bills, commitments and warrants issued for those assessments. Assessors should also forward a separate notice of commitment for the surcharge to the accounting officer.

Some communities may not have modifications in their billing software completed in time to bill the surcharge on the first preliminary tax bill. In that case, the surcharge commitment and billing can be deferred to the next tax bill to make the technical changes. The failure to bill a preliminary surcharge installment for technical reasons does not change the surcharge owed. The total surcharge for the year remains the same, but will be payable in fewer installments. We recommend that a stuffer be included with the first tax bill that explains the purpose and calculation of the surcharge, when the surcharge will ordinarily be billed and due, and the procedures for seeking any local option surcharge exemptions. (See Section V-B-1-a below for information on the use of community preservation funds for billing software changes in the first year of implementation.)

**B. Surcharge Amount**

The surcharge is calculated by multiplying the real estate tax on the parcel, as reduced by any property tax exemptions or abatements authorized by [G.L. c. 59](#) or any other law, by the adopted percentage. Therefore, the surcharge to be paid by a taxpayer receiving an exemption or abatement is reduced in proportion to the amount of such exemption or abatement, and real estate parcels that are fully exempt from property taxes are not subject to any surcharge. [G.L. c. 44B, § 3\(c\)](#).

Reductions in real estate tax liability pursuant to [G.L. c. 59, § 5K](#) (senior work-off abatement) and [G.L. c. 59, § 5N](#) (veteran work-off abatement), adopted by local option, must be treated as exemptions for purposes of calculating the community preservation surcharge.

Parcels may also be fully or partially exempt from the surcharge if the community adopts any of the CPA exemptions. (See Section I-A-1-b above.)

**C. Delinquent Surcharges**

Surcharges not paid by the due date accrue interest at the rate set forth in [G.L. c. 59, § 57](#) in the same manner as overdue property taxes in the community. Interest on overdue surcharges belongs to the CP Fund.

**D. Partial Payments**

If a taxpayer expressly directs the tax collector to apply a payment to the regular real estate tax and not the surcharge, the collector must apply the payment as directed. Otherwise, the collector may determine how to apply the payment.

**E. Collection Remedies**

Collectors may enforce collection of the surcharge with any or all of the remedies available for collection of regular real estate taxes, including a tax taking. [G.L. c. 44B, § 4\(c\)](#); [G.L. c. 60](#). The lien for the surcharge arises as of the January 1 assessment date of the fiscal year to which the surcharge relates and terminates the same time as that year's real estate tax lien. Collectors should perform timely takings to ensure that both liens do not terminate. [G.L. c. 60, § 37](#); [G.L. c. 60, § 53](#).

A standard notation should be pre-printed on all municipal lien certificates that real estate taxes in the community are subject to the community preservation surcharge under [G.L. c. 44B](#). Collectors should list separately the amount of any outstanding surcharge on the certificate in the same manner as an outstanding district tax is shown.

**F. Abatements and Exemptions**

All committed surcharge amounts abated or exempted are charged to the community preservation surcharge receivable of the fiscal year. This includes reductions in committed surcharges resulting from an abatement or exemption of the real estate tax,

or an abatement or exemption of the surcharge itself. The abatement or exemption certificate, as well as any abatement and exemption reports to other officers, should state separately the amount of any surcharge abatement or exemption granted.

**G. Refund Accounting**

All refunds of surcharges are accounted for in the CP Fund.

**H. Surcharge Deferrals**

Taxpayers who are eligible to defer property taxes under [G.L. c. 59, § 5\(41A\)](#) may not defer the surcharge.

**I. Surcharge on Classified Land Taxes**

The community preservation surcharge assessed on classified forest land under [G.L. c. 61](#), agricultural or horticultural land under [G.L. c. 61A](#) and recreational land under [G.L. c. 61B](#) is calculated based on the real estate tax generated by the classified value of the property. The surcharge is not assessed on withdrawal, rollback or conveyance taxes imposed under G.L. Ch. 61, 61A or 61B.

**J. Local Option Surcharge Exemptions ([G.L. c. 44B, § 3\(e\)](#))**

1. Decisionmaker

The board of assessors grants or denies all surcharge exemptions.

2. Eligibility Date

Exempt status is determined as of January 1. Any ownership, occupancy, age, income or usage classification requirement for the exemption must be met as of that date.

3. Eligibility Requirements

a. Residential Exemption ([G.L. c. 44B, § 3\(e\)\(3\)](#))

The residential exemption applies to the real estate tax assessed on the first \$100,000 in assessed valuation of all properties classified as Class One, Residential, as of January 1. If the property is multiple-use, the exemption applies to the real estate tax assessed on the first \$100,000 of the portion of the assessed valuation allocated to Class One.

b. Commercial/Industrial Exemptions ([G.L. c. 44B, § 3\(e\)\(2\) and \(4\)](#))

There are two commercial/industrial exemptions that apply to the real estate tax assessed on properties classified as Class Three, Commercial, and Class Four, Industrial, as of January 1.

- (1) The first commercial/industrial exemption ([G.L. c. 44B, § 3\(e\)\(2\)](#)) is a total exemption from the surcharge and applies only in a fiscal year in which the tax rate is split. If a property is multiple-use, the exemption applies to the real estate tax assessed on the portion of the assessed valuation allocated to commercial and industrial.
- (2) The second commercial/industrial exemption ([G.L. c. 44B, § 3\(e\)\(4\)](#)) applies to the real estate tax assessed on the first \$100,000 in assessed valuation of all properties classified as commercial/industrial. If the property is multiple use, the exemption applies to the real estate tax assessed on the first \$100,000 of the portion of the assessed valuation allocated to commercial and industrial.

For example, Anytown has accepted an exemption for the first \$100,000 of value of residential (Class One) properties and an exemption for the first \$100,000 of value of commercial/industrial (Class Three and Four) properties. A property has an assessed value of \$500,000 allocated as follows: \$200,000 Class One and \$300,000 Class Three. The CPA surcharge will be on the real estate tax assessed on \$100,000 Class One and \$200,000 Class Three.

c. Low Income/Low or Moderate Income Senior Exemption ([G.L. c. 44B, § 3\(e\)\(1\)](#))

(1) Eligible Taxpayers

(a) Ownership and Occupancy

An applicant for the low income or low or moderate income senior exemption must be a natural person, who owns and occupies the property as a domicile (primary residence) as of January 1. An applicant may be (1) sole owner, (2) co-owner, (3) life tenant or (4) trustee with sufficient beneficial interest in the property under the terms of trust. All co-owners do not have to occupy the property as a domicile for the exemption to be granted.

The exemption does not apply to residential property owned in whole or in part by a corporation or other business entity.

(b) Age

To qualify as a senior, the applicant must be 60 or older as of January 1.

(2) Income Limits

Each co-owner of the domicile must meet a household annual income standard for the low income or low or moderate income senior exemption to be granted. The income standard is based on the area-wide median income determined annually by the United States Department of Housing and Urban Development. Therefore, assessors must establish new limits for each year.

Annual household income is the income received from all sources regardless of income tax status under federal or state law during the calendar year preceding January 1 by all members of the household 18 or older who are not full-time students, less deductions for dependents other than a spouse and certain medical expenses. That amount must be at or below the allowable income limit for the household type (senior or non-senior) and size.

(See Community Preservation Surcharge Low/Moderate Income Exemption for more information, Attachment II-1 below.)

(3) Exemption Amount

A qualified taxpayer receives an exemption of the entire surcharge attributable to the real estate tax assessed on the Class One, Residential, assessed valuation of the parcel, regardless of ownership share or number of residential dwelling units.

4. Applications

a. Submittal

Taxpayers must apply annually for the low income or low or moderate income senior exemption. Application may be made on [Form CP-4](#) or other format developed by the assessors to obtain the same information. Assessors do not need to obtain prior approval of the Commissioner of Revenue to use forms they have designed so long as the content is essentially the same as [Form CP-4](#).

Assessors may review applications submitted by seniors for a [G.L. c. 59, § 5, Clause 41, 41B or 41C personal exemption or Clause 41A tax deferral](#) to determine eligibility for the low or moderate income exemption as well. In those cases where no further information is needed to establish eligibility for the exemption, it may be granted without requiring completion of a separate application.

b. Deadline

An application for exemption must be filed on or before the deadline for an application for exemption under [G.L. c. 59, § 59](#) – April 1 of the year

to which the tax relates or 3 months after the bill is issued, whichever is later.

c. Denials

Assessors may determine their own forms for denials of exemptions by adapting their ordinary real estate abatement/exemption denial notices.

d. Appeals

Any person aggrieved by a decision of the assessors, or by their failure to act, on an application for exemption may appeal as provided in [G.L. c. 59, §§ 64 – 65B](#).

e. Public Disclosure of Application Information

Applications for exemptions are open for inspection only as provided in [G.L. c. 59, § 60](#). Except in proceedings before the county commissioners, the appellate tax board or a court, applications for exemption are available for inspection only by assessors, the commissioner, deputies, clerks and assistants of either the assessors or the commissioner and such other officials or private auditors of the commonwealth or the city or town who are required to inspect such applications in the performance of their official duties. In addition, the applicant and his designated representative may inspect and obtain a copy of the application.

### **III. ALTERNATIVE MUNICIPAL FUNDING - G.L. c. 44B, § 3(b½)**

#### **A. Purpose**

Cities and towns can qualify for all three rounds of state trust fund distributions by accepting the CPA pursuant to [G.L. c. 44B, § 3\(b½\)](#), adopting (at least) a one percent surcharge on the real estate tax levy and appropriating additional municipal revenues to the CP Fund so that the total funds (surcharge plus additional municipal revenues) equal three percent of the real estate tax levy. (See Section I above for CPA Adoption under [G.L. c. 44B, § 3\(b½\)](#) and Section VI-B below for information on state trust fund distributions from the Massachusetts Community Preservation Trust Fund.)

#### **B. Allowable Sources of Additional Municipal Revenue**

1. General Fund Revenues

2. Available Funds - If subject to a restriction, the funds remain subject to the restriction. For example: (i) sale of real estate proceeds, if not needed to pay off indebtedness, may be appropriated for CPA purposes consistent with the restrictions of [G.L. c. 44, § 63](#); and (ii) existing dedicated housing, open space



and historic preservation funds, however authorized, may be appropriated for a CPA purpose consistent with any restrictions.

3. Gifts for Community Preservation Purposes received from private sources.
4. Prohibited Funds - Funds shall not include any state or federal funds.

**C. Appropriation of Additional Municipal Revenues to the Community Preservation Fund**

1. Adoption of CPA Pursuant to G.L. c. 44B, § 3(b½)

For a city or town to be eligible to appropriate additional municipal revenues to the CP Fund, it must have adopted the CPA pursuant to [G.L. c. 44B, § 3\(b½\)](#). (See Section I-E above for Amendment Procedure for a community that has already adopted the CPA pursuant to [G.L. c. 44B, § 3\(b\)](#) and wishes to appropriate additional municipal revenues to the CP Fund pursuant to [G.L. c. 44B, § 3\(b½\)](#). And see Section VI-C below, for discussion of supplemental appropriations for community preservation projects that do not become part of the CP Fund.)

2. Appropriation by the Legislative Body

The legislative body must vote the appropriation of additional municipal revenues to the CP Fund. The appropriation must:

- a. State a fixed dollar amount.
- b. Be voted before the tax rate is set if appropriating from general fund.
- c. Be voted by June 30 if from available funds.

3. Eligibility for State Trust Fund Distributions (State Matching Funds)

- a. Additional sources of municipal revenue must be appropriated to the CP Fund by June 30, to be counted for the purpose of state trust fund distributions.
- b. To be eligible for three rounds of matching funds from the state trust fund, the city or town must have appropriated additional sources of municipal revenues to the CP Fund so that the total funds (additional appropriated municipal revenues plus surcharge) equal three percent of the real estate tax levy.

**D. Cessation of Appropriation of Additional Sources of Municipal Revenue**

If the city or town no longer appropriates all or part of the additional revenues pursuant to [G.L. c. 44B, § 3\(b½\)](#), the surcharge of not less than one percent remains in effect unless amended or revoked pursuant to [G.L. c. 44B, § 16](#).

#### **IV. COMMUNITY PRESERVATION COMMITTEE**

##### **A. Establishment**

Every city or town that accepts [G.L. c. 44B, §§ 3-7](#) must enact a by-law or ordinance establishing a Community Preservation Committee (CPC). [G.L. c. 44B, § 5](#). The by-law or ordinance must address, at a minimum, the following:

- The composition of the committee.
- The member selection method by election or appointment. The term members will serve.
- In a city, the ordinance must also set forth the mechanisms under which the legislative body may approve or veto community preservation appropriations consistent with the city charter.

The by-law or ordinance should also state whether, upon revocation of the CPA, the committee will continue to provide spending recommendations for remaining community preservation funds that are not required for the satisfaction of outstanding obligations. (See Section I-F above on Revocation of Acceptance and Section VI-A-3 below on Wind-down of Fund on CPA Revocation.)

In order to take advantage of community preservation opportunities, the legislative body should be asked to adopt the by-law or ordinance at the same time it is asked to accept the CPA and approve the surcharge percentage. Any by-law or ordinance adopted at that time may not take effect, however, until the voters subsequently approve the acceptance referendum question and, in towns, all by-law approval procedures under [G.L. c. 40, § 32](#) have been followed.

##### **B. Membership**

The CPC must consist of five to nine members. The members must include a designee from each of the following boards, commissions or authorities:

- The conservation commission ([G.L. c. 40, § 8C](#)).
- The historical commission ([G.L. c. 40, § 8D](#)).
- The planning board ([G.L. c. 41, § 81A](#)).
- The board of park commissioners ([G.L. c. 45, § 2](#)).
- The housing authority ([G.L. c. 121B, § 3](#)).

If these municipal agencies do not exist in the community, the by-law or ordinance may designate other members from agencies or persons performing like duties.

##### **C. Action**

A majority of the members of the CPC shall constitute a quorum and the majority of the quorum may act on committee matters. [G.L. c. 44B, § 5\(c\)](#).

## D. Role

The CPC is responsible for evaluating the community preservation needs of the city or town and making recommendations for appropriations from the CP Fund to the community's legislative body as part of the annual budget process. Its role is analogous to that of a capital planning committee in developing a multi-year capital improvement plan for a community and presenting an annual capital budget to its legislative body.

### 1. Annual Needs Study

The committee must study the community preservation needs, possibilities and resources of the city or town (including consideration of regional community preservation projects), consulting with various municipal agencies, particularly those represented on the committee. It should then develop a community preservation program and financial plan for the city or town. The program should identify long-term and short-term goals and needs, set criteria for evaluating proposed acquisitions and initiatives, prioritize projects and estimate their costs. The financial plan should include a multi-year revenue and expenditure forecast and identify the fund or other municipal financing source for each proposed project. The program and financial plan should be reviewed and updated annually to reflect changes in the community's needs, priorities and resources.

The committee must hold at least one public, informational hearing as part of the initial study and annual review process. Notice of the annual hearing must be posted at least two weeks before the hearing date. In addition, the committee must publish a hearing notice in a newspaper of general circulation in the community for each of the two weeks before the hearing date.

### 2. Annual Recommendations and Budget

The community preservation budget should include the committee's revenue projections for the fiscal year and identify all appropriations that the committee recommends funding from CP Fund financing sources. CPA appropriations fall into two categories: (1) for the CPC's administrative or operating budget; and (2) for eligible community preservation asset projects. The three community preservation asset categories are: (1) open space (including land for recreational use); (2) historic resources; and (3) community housing. [G.L. c. 44B, §§ 2 and 5\(b\)\(2\)](#). In determining its recommendations to the legislative body, the CPC should first determine whether a project is eligible for CPA funding under [G.L. c. 44B](#). If a project is eligible for CPA funding, the CPC should then determine whether to recommend funding to the legislative body after considering its community preservation program and financial plan (described above), other projects competing for CPA funding and other relevant information. The CPC is not obligated to recommend that the legislative body approve funding for a project simply because the project is eligible for CPA funding. The CPC's recommendations should be included in an annual community preservation budget presented as part of the community's annual budget process and should

include recommendations for the funding of debt service and any other existing or ongoing obligations.

Alternatively, debt service, committee administrative and other expenses to be financed with annual CP Fund revenues may be included in the community's omnibus budget. The community preservation budget should account for the commitment of funds for these expenditures, however.

(See Section V below for information on minimum annual commitment and allowable CPA expenditures.)

3. Additional Recommendations

Throughout the year, the CPC may make additional recommendations on acquisitions and projects to the extent funds are available to support them.

4. Legislative Body Action on Recommendations

The legislative body may make appropriations from or reservations of community preservation funds in the dollar amount recommended by the CPC or it may reject the recommendations of the CPC or, if consistent with the community's charter, local by-laws (including the by-law establishing the CPC) and procedures, the legislative body may reduce any recommended amount.

The legislative body may not increase any recommended appropriation or reservation and it may not change the funding source recommendation of the CPC. In addition, it may not appropriate or reserve any CP Fund monies on its own initiative without a prior recommendation by the CPC. [G.L. c. 44B, § 7](#).

There are four times when appropriations may be made by the legislative body from the CP Fund without a prior recommendation of the CPC:

- Appropriations to an administrative budget of the CPC. Providing administrative and operating expenses to the committee is not included within the "gatekeeper" language of [G.L. c. 44B, § 7](#) which requires a prior recommendation of the CPC. It is, therefore, recommended that the legislative body appropriate an administrative budget for the CPC in the first year of the CPA's implementation if the CPC has not yet been formed.
- Appropriations to pay debt service on debt previously voted by the legislative body after a recommendation of the CPC. (This is because the CPC made the original recommendation to the legislative body to approve the issuance of the debt.)
- Upon revocation of the CPA, unless the community's by-law or ordinance provides that the CPC's recommendation role continues as long as community preservation funds remain that are not required

for the satisfaction of outstanding obligations. (See Section VI-A-3 below on Wind-down of Fund on CPA Revocation.)

- In the first year of adoption of the CPA, before the CPC is formed, the legislative body may appropriate CP Fund annual revenues to an annual budgeted reserve. (See Section VI-A-2-b-(2) below for information on the annual budgeted reserve.) Before an appropriation may be made by the legislative body from the annual budgeted reserve for a CP project or other CP expenditure, however, the appropriation will require a recommendation from the CPC.

## **E. Recordkeeping**

The CPC is responsible for maintaining records relating to the use of the CP Fund. [G.L. c. 44B, § 13](#). These records are subject to disclosure as public records. [G.L. c. 66, § 10](#); [G.L. c. 4, § 7, Clause 26](#).

### 1. Recommendations

The CPC must keep a record of its recommendations to the legislative body and the specific action taken on them.

### 2. Expenditures

The CPC should track all appropriations and expenditures made from the CP Fund. The municipal clerk certifies all appropriation votes and the accounting officer maintains the official financial records of the municipality. The CPC should periodically monitor spending from the fund, however, in the same manner as department heads review monthly reports from the accounting officer on the status of their budgets.

### 3. Property Interests

The CPC must maintain an inventory of all real property interests acquired, disposed of or improved by the community after recommendation of the committee. The inventory must contain, at a minimum, the names and addresses of the grantors and grantees, the amount of consideration and all relevant action dates. It should also reference all documents related to acquisitions, dispositions and improvements, such as purchase and sale agreements, deeds and permanent restrictions on acquired property interests. [G.L. c. 44B, § 12\(a\)](#).

### 4. Reporting

The community's annual reporting requirements under the CPA are described in Section IX below. The CPC should coordinate with applicable municipal officials to provide the information required by such reports and ensure that annual reports are timely filed.

Under [G.L. c. 44, § 55C\(a\),\(c\)\(1\)](#), a municipal affordable housing trust is required to expend any CP funds it receives only for allowable CP community housing purposes under [G.L. c. 44B, § 5\(b\)\(2\)](#), account for such funds separately and, at the end of the fiscal year, report the expenditure of such funds to the CPC for inclusion in the community preservation initiatives report, Form CP-3, described in Section IX below.

## **V. COMMUNITY PRESERVATION FUND EXPENDITURES**

### **A. Expenditure Prerequisites**

The CP Fund is a special revenue fund subject to appropriation. A recommendation by the CPC and an appropriation by the legislative body of the city or town are both required to spend any monies belonging to the fund. [G.L. c. 44B, § 7](#). (See Section IV-D-4 above for the four instances where a prior recommendation of the CPC is not required for an appropriation of the legislative body.) Appropriations are by majority vote, except in the case of borrowing ([G.L. c. 44B, § 11](#) and [G.L. c. 44, § 2](#)) and eminent domain ([G.L. c. 44B, § 5\(e\)](#)) where a two-thirds vote is required. (See Section VII below on Borrowing and Section VIII-A below on Acquisitions.)

### **B. Allowable Expenditures**

CPA appropriations fall into two categories: (1) for the CPC's administrative or operating budget; and (2) for eligible community preservation projects.

#### 1. Annual Administrative and Operating Expenses of the CPC

Community preservation funds may be used for the administrative and operating expenses of the CPC. Annual appropriations for these expenses may not exceed five percent of the year's estimated annual CP Fund revenues. [G.L. c. 44B, §§ 6-7](#). (See Section VI-A-2-a-(1) below for definition of "annual fund revenues.") Committee administrative expenses are limited to expenses necessary to support the CPC's statutory responsibilities. (See Section IV above for information on the CPC and its statutory responsibilities.)

##### a. Eligible Expenditures

- Clerical support for the CPC (i.e., transcribing CPC meeting minutes).
- Wages or salary of a person providing direct administrative support services to the CPC.
- CPC office supplies.
- Newspaper advertisements for CPC hearings.

- Expenses for contractual or consulting services that assist the CPC in making its decisions or that provide information needed by the CPC to make spending recommendations to the legislative body, including feasibility studies, assessments, appraisals or preliminary plans related to a proposed CPA project under consideration by the CPC.
- Funding for historic resource or affordable housing inventories or historic preservation plans or affordable housing plans or similar plans, the purpose of which is to assist the CPC in performing its statutory duty to study the community preservation needs, possibilities and resources of the city or town and make spending recommendations to the legislative body.
- Tax billing software changes and outside vendors necessary to integrate such software for the implementation of the CPA (first year only). [G.L. c. 44B, § 6.](#)

b. Ineligible Expenditures

- Salaries, wages or benefits or other indirect costs incurred by other general government departments such as assessors, treasurer/collector, accounting officer, town counsel, planning department or others.
- Costs of a study to determine if a particular property is a historic resource. (A particular property is a historic resource if it meets the definition of “historic resource” under [G.L. c. 44B, § 2.](#))
- Costs of studies, assessments, plans or other information required in seeking the designation of a historic district. If, however, the studies, assessments or plans result in information which can assist the CPC in performing its statutory duty to study the community preservation needs, possibilities and resources of the city or town and make spending recommendations to the legislative body, then the costs allocated to that portion of the work could be an allowable CPC administrative expenditure.
- Costs of feasibility studies, assessments, appraisals or plans unrelated to the CPC’s statutory duties or a proposed CP project or related to a project which is not eligible for funding under the CPA.
- Supplemental costs of a community preservation project approved by the legislative body. The CPC’s approved administrative/operating budget appropriation is a separate appropriation from an approved project appropriation. A transfer of funds from one appropriation to another, in this case from the CPC administrative appropriation to a CP project appropriation,

requires approval of the legislative body upon a CPC recommendation. [G.L. c. 44, § 33B.](#)

- Contracted services to implement a particular community preservation project approved by the legislative body, for example, contract legal services regarding the acquisition of a particular parcel of land or architectural services regarding the preparation of construction documents for creation of a community housing development. Such project expenses, together with any other acquisition or construction expenses, must be paid from the project's appropriation, not from the CPC's administrative budget.

2. Community Preservation Project Expenditures ([G.L. c. 44B, § 5](#))

a. Community Preservation Asset Categories

The three community preservation asset categories are: (1) open space (including land for recreational use); (2) historic resources; and (3) community housing. In each asset category, CP funds may be appropriated for the following projects:

(1) Open Space:

- (a) The acquisition, creation and preservation of open space.
- (b) The rehabilitation or restoration of open space; provided the open space was acquired or created with community preservation funds.

(2) Land for Recreational Use:

The acquisition, creation, preservation, rehabilitation and restoration of land for recreational use.

(3) Historic Resources:

The acquisition, preservation, rehabilitation and restoration of historic resources.

(4) Community Housing:

- (a) The acquisition, creation, preservation and support of community housing.
- (b) The rehabilitation or restoration of community housing; provided the housing was acquired or created with community preservation funds.



- (c) Appropriations to a municipal affordable housing trust fund created by a municipality pursuant to [G.L. c. 44, § 55C](#); however, the affordable housing trust may expend CP funds only for community housing purposes described in sections (a) and (b) above. [G.L. c. 44, §§ 55C\(a\), \(c\)\(1\)](#).

Whenever possible, the CPC should recommend projects that reuse existing buildings or construct new buildings on previously developed sites. [G.L. c. 44B, § 5\(b\)\(2\)](#).

b. Definitions

The CPA clarifies allowable community preservation project expenditures through its definitions.

- (1) See [G.L. c. 44B, § 2](#) for CPA definitions.
- (2) “Creation” is not defined in [G.L. c. 44B, § 2](#), but was defined by the court in the case of [Seideman v. City of Newton, 452 Mass. 472 \(2008\)](#) to mean “to bring into being or to cause to exist.”

c. Related Project Expenditures

Fund monies may also be appropriated for the following community preservation project related expenditures:

- (1) Annual principal and interest payments on bonds and notes issued pursuant to [G.L. c. 44B, § 11](#) for allowable community preservation purposes.
- (2) Damages payable to property owners for real estate interests taken by the city or town pursuant to [G.L. c. 44B, § 5\(e\)](#) by eminent domain for community preservation purposes.
- (3) Matching funds for state and federal grants for allowable community preservation purposes. Participation in the community preservation program does not affect the eligibility of the city or town to receive funds from any other state grant programs. [G.L. c. 44B, § 14](#).
- (4) Property acquisition-related expenses, including:
  - (a) Appraisal costs.
  - (b) Expenses for title searches.
  - (c) Closing fees.

- (5) Preparation, issuance and marketing costs for bonds or notes for borrowings made for community preservation purposes.
- (6) Payments to a nonprofit organization to hold, monitor and enforce usage restrictions on real property acquired with community preservation funds. [G.L. c. 44B, § 12\(a\)](#).

d. Minimum Annual Commitment

Each fiscal year, upon the recommendation of the CPC, the legislative body must appropriate or reserve for future appropriation at least 10 percent of the annual fund revenues for projects in each of the three community preservation asset categories of open space (including land for recreational use), historic resources and community housing. [G.L. c. 44B, § 6](#). Appropriations, including those to a reserve, require a legislative body vote that states the specific dollar amount.

The 10 percent minimum commitment should be based upon a good faith estimate of the annual fund revenues. If it is later determined that the annual fund revenues were underestimated by more than a de minimis amount, the CPC should, when circumstances allow, recommend an appropriation by the legislative body to reach the required 10 percent. (See Section VI-A-2-a below for discussion of Annual Fund Revenues.)

In the first year of implementing the CPA, there are often timing issues involved with establishing the CPC and/or holding a meeting of the legislative body to make community preservation appropriations or reservations before the tax rate is set. As a result, if the 10 percent annual commitments for the first fiscal year of the CP Fund have not been made by the end of the fiscal year, the municipality's accounting officer must make the reservations.

If an appropriation was made to meet the annual 10 percent minimum commitment and the appropriation is not fully expended for one reason or another (the project does not go forward or the project was completed at a cost substantially less than the appropriation) and this results in spending or reserving for that year that is materially less than the required annual 10 percent minimum commitment in that category, then the CPC should, when circumstances allow, recommend an appropriation or reservation by the legislative body to reach the required 10 percent minimum for that category for that year.

Annual debt service expenditures for CPA borrowings count toward meeting that year's 10% minimum for the applicable category.

e. Grant Agreements

It is recommended that a community, in consultation with its legal counsel, develop and utilize a community preservation fund grant

agreement to ensure completion of an approved project and implementation of the project's community preservation purpose. This is particularly important if a grant is made to a non-municipal department, individual, private or non-profit entity, or any entity, agency or grantee over which the municipality has no legal control, in order to protect the municipality's investment and ensure implementation of the project's purpose and compliance with the *Anti-aid Amendment to the Massachusetts Constitution*, if applicable. (See Section V-C-5 below, Prohibited Expenditures, for more information on the *Anti-aid Amendment*.) Communities should consider, as appropriate, the following provisions in grant agreements: name of grantee; non-assignability of grant (without advance written approval of municipality); detailed description of any restoration, rehabilitation or other work to be performed by the grantee; construction specifications and standards; relevant historic rehabilitation standards; time periods for performance; total project budget and listing of all funding sources required for project completion; requirement for commitment of total project funding sources before release of CPA funding; designation of who will inspect and approve any required work; provision for periodic release of funding payments as work is completed and approved; return of grant funds not used to the CP Fund; grantee reporting requirements; grantee matching fund requirements; timing of execution, delivery and recording of required community preservation restriction documents or easements for public access/use; remedies for any breach or non-performance of grantee, including return of CP funds; designation of responsibility for continued maintenance of assets or improvements funded with CP funds; any other requirement or condition of the grant.

f. Project Expenditure Examples

See Community Preservation Fund Project Expenditure Examples, Attachment V-1 below; Community Preservation Fund Allowable Project Spending Purposes, Attachment V-2 below; and CPA Project Eligibility Flow-Chart, Attachment V-3 below.

C. Prohibited Expenditures

Fund monies may not be spent:

1. To supplant funds being used for existing expenses, even if they serve community preservation purposes. The CP Fund is a supplementary funding source intended to increase available resources for community preservation acquisitions and initiatives. [G.L. c. 44B, § 6.](#)

Example: Prior to the adoption of the CPA, the municipality voted to borrow for the acquisition of open space. After adoption, CPA funds **cannot** be used to pay the debt service on such acquisition. (See Section VII below on Borrowing.)

2. To pay for maintenance of any real or personal property. [G.L. c. 44B, § 5\(b\)\(2\)](#). See definition of “maintenance”. [G.L. c. 44B, § 2](#).

Examples:

- It is **not** permissible to use CPA funds for a yearly maintenance contract to maintain slate roofs on historic town buildings.
- Expenditures for water use charges for field irrigation, mowing and other maintenance charges are **not** allowable.

Because the CPA definition of "maintenance" was amended to incorporate language from the Internal Revenue Service's then-definition of "repair," case law interpreting whether an item is a “repair” under that IRS regulation may be considered when determining whether an item is “maintenance” for CPA purposes. See [Section 71 of Chapter 139 of the Acts of 2012](#) and [26 CFR § 1.162-4, April 1, 2011](#).

3. For the acquisition of artificial turf for athletic fields. (Applies to projects approved on or after July 1, 2012.) [G.L. c. 44B, § 5\(b\)\(2\)](#).
4. For horse or dog racing or the use of land for a stadium, gymnasium or similar structure. [G.L. c. 44B, § 2](#).
5. In violation of *[The Anti-aid Amendment to the Massachusetts Constitution, Mass. Const. Amend. Article 42, § 2, as amended by Article 103](#)*, which provides in relevant part:

*No grant, appropriation or use of public money or property or loan of credit shall be made or authorized by the Commonwealth or any political subdivision thereof for the purpose of founding, maintaining or aiding any...institution...or charitable or religious undertaking which is not publicly owned and under the exclusive control, order and supervision of public officers or public agents authorized by the Commonwealth or federal authority or both.. and no such grant, appropriation or use of public money or property or loan of public credit shall be made or authorized for the purpose of founding, maintaining or aiding any church, religious denomination or society....*

A three-factor test to determine the constitutionality of grants challenged under the first clause of the *Anti-aid Amendment* was developed by the court in [Commonwealth v. School Comm. of Springfield](#), 382 Mass. 665, 675 (1981). That three-part test was applied by the court in [Caplan v. Town of Acton](#), 479 Mass. 69 (2018) when evaluating the constitutionality of a grant of CPA funds under the second clause of the *Anti-aid Amendment*. The three factors are: (i) whether the proposed grant is for the purpose of founding, maintaining or aiding [the institution, private organization, nonprofit, church, etc.]; (ii) whether the effect of the grant is to substantially aid [the institution, private organization,

nonprofit, church, etc.]; and (iii) whether the grant avoids the political and economic abuses which prompted the passage of the *Anti-aid Amendment*.

Although the *Anti-aid Amendment* applies to grants to private entities and religious and charitable organizations, the principle that public funds may not be granted for private purposes and can be used only for public purposes also applies to grants of public funds to individuals. “It is a fundamental principle, conforming to constitutional requirements...and frequently declared, that money raised by taxation can be used only for public purposes and not for the advantage of private individuals.” [\*Opinion of the Justices\*](#) 313 Mass. 779, 784 (1943).

Whenever a grant of community preservation funds is being considered for a private organization or individual or entity over which the city/town has no legal control, municipal counsel should be consulted to ensure compliance with the *Anti-aid Amendment* and relevant case law. (See also Section V-B-2-e above, for information on requiring grant agreements if the recipient is not a municipal department.)

## VI. FUNDS

### A. Community Preservation Fund

#### 1. Special Revenue Fund

The CP Fund is a special revenue fund. The accounting officer must establish and maintain it as a separate account. [G.L. c. 44B, § 7.](#)

##### a. Receipts

The following receipts are credited to the CP Fund:

- (1) All monies collected from the surcharge. [G.L. c. 44B, § 7\(i\).](#) (For more information on the surcharge, see Section II above.)
- (2) The additional funds from allowable municipal sources appropriated to the CP Fund by the city or town pursuant to [G.L. c. 44B, § 3\(b½\)](#). [G.L. c. 44B, § 7\(ii\).](#) (For more information on Section 3(b½), see Section III above.)
- (3) All proceeds from borrowings made under the community preservation program. [G.L. c. 44B, § 7\(i\).](#) (For more information on borrowing, see Section VII below.)
- (4) All funds received from the Commonwealth for community preservation purposes, including matching fund distributions from the Massachusetts Community Preservation Trust Fund, [G.L. c. 44B, §§ 9 and 10](#). [G.L. c. 44B, § 7\(iii\).](#) (For more

information on the Massachusetts Community Preservation Trust, see Section VI-B below.)

- (5) All funds received from any other source for community preservation purposes. [G.L. c. 44B, § 7\(iii\)](#).

Examples:

- The CP Fund is credited with any self-help (or other types of) reimbursement grants for a land acquisition financed with community preservation funds.
  - The CP Fund is credited with rents received from the rental of property acquired with community preservation funds.
- (6) Proceeds from the disposal of real property acquired with community preservation funds. [G.L. c. 44B, § 7\(iv\)](#). (See [G.L. c. 44B, § 2](#) for definition of real property.)
- (7) Damages and penalties from persons who knowingly damage properties acquired by cities and towns using community preservation funds. [G.L. c. 44B, § 15](#).
- (8) All income and interest earned on CP Fund monies. [G.L. c. 44B, § 7](#).

b. Turnovers

The collector should pay over to the treasurer all surcharge payments at the same time as regular property tax payments are turned over. [G.L. c. 44B, § 4](#).

c. Investment

The treasurer may invest monies in the CP Fund in savings banks, Massachusetts trust companies, Massachusetts FDIC banking companies or national banks or in shares of co-operative banks, savings and loan associations or federal savings and loan associations doing business in Massachusetts or in the same manner authorized for the investment of trust funds under [G.L. c. 44, § 54](#), [G.L. c. 44B, § 7](#). The treasurer may pool or establish a separate bank account for community preservation cash. A treasurer who pools cash must allocate interest earned on community preservation cash to the CP Fund.

2. Fund Financing Sources

a. Annual Fund Revenues (Annual Recurring Revenues)

A community may appropriate from the estimated annual fund revenues of the CP Fund for allowable community preservation expenditure purposes. It may also reserve those revenues for future appropriation. Appropriations and reservations must state a specific dollar amount.

(1) Definition

For a city or town that has adopted the CPA pursuant to [G.L. c. 44B, § 3\(b\)](#), annual fund revenues consist of the receipts from:

- The surcharge and
- State trust fund distribution for the fiscal year.

For a city or town that has adopted the CPA pursuant to [G.L. c. 44B, § 3\(b½\)](#), annual fund revenues consist of the receipts from:

- The surcharge
- The additional revenue from other allowable sources appropriated to the CP Fund pursuant to [G.L. c. 44B, § 3\(b½\)](#) (See Section III above for more information on Section 3(b½)) and
- State trust fund distribution for the fiscal year.

For the first fiscal year the surcharge is imposed, annual fund revenues will not include receipts from the state trust fund because state trust funds are not distributed to the city or town until after the first fiscal year of surcharge collections is completed.

In estimating the amount of the state trust fund distribution, communities should refer to the Division of Local Services' estimate of state trust fund distributions published each spring. (See Section VI-B below for information on the Massachusetts Community Preservation Trust Fund.)

Communities can appropriate from estimated annual fund revenues until the tax rate is set for that fiscal year.

For example, if a community has based its community preservation appropriations for the fiscal year upon an estimated amount of state matching funds and, later, the amount of actual state matching funds distributed to the community are in excess of the community's estimated amount, the community can appropriate the additional state matching funds only if the tax rate has not been set for the fiscal year. Once the tax rate is set, excess CP Fund revenues over estimates, including excess state matching funds over estimates, will close at the end of the fiscal year to the CP Fund balance and become part of that funding source after the accounting officer reports it. (For more

information on the CP Fund balance, see Section VI-A-2-b-(3) below.)

Spending from appropriations from estimated annual fund revenues can commence July 1 of the fiscal year (of the estimated revenues).

(2) Amount Committed

The actual amount available to support appropriations and reserves for new acquisitions and initiatives in any fiscal year will be affected by surcharge collection rates, as well as by the amount appropriated to cover CPC administrative expenses and existing debt service or other obligations. To ensure the fund does not incur a revenue shortfall, communities should generally limit total appropriations and reservations to no more than the prior year's actual surcharge and the estimated state trust fund receipts. For communities that have adopted the CPA pursuant to [G.L. c. 44B, § 3\(b½\)](#), total appropriations and reservations should be limited to no more than the prior year's actual surcharge, the additional revenue from other allowable sources appropriated to the CP Fund for the upcoming fiscal year and the estimated state trust fund receipts.

(3) Revenue Shortfalls

If budgeted expenditures, reservations and annual fund revenues for a fiscal year compare unfavorably to actual amounts, the shortfall must be raised from the next year's annual fund revenues. Abated or uncollectible surcharges are funded by charges to the surcharge receivable of the fiscal year.

b. Other Fund Financing Sources

Appropriations for allowable community preservation purposes may also be made from other available sources within the fund at any time during the fiscal year. Spending from appropriations from available funds can commence once the appropriation vote is effective, unless the funds include new reservations from estimated annual revenues, in which case spending can commence on July 1.

Other Fund Financing Sources are:

- (1) Special Purpose (Restricted) Reserves – The community preservation funds reserved by the legislative body for future appropriation for one of three categories of community preservation purposes. A separate reserve exists within the CP Fund for each category of community preservation purposes and later appropriations from each reserve are restricted to those



purposes. Appropriations from a special purpose must state a specific dollar amount. Any unappropriated balance in a special purpose reserve at the close of the fiscal year remains in the special purpose reserve. The three special purpose reserves are:

- CP Fund Open Space Reserve (includes recreation)
- CP Fund Historic Resources Reserve and
- CP Fund Community Housing Reserve.

- (2) Community Preservation Fund Annual Budgeted Reserve – The community preservation funds reserved by the legislative body for future appropriation for any community preservation purpose during the fiscal year. Appropriations may be made from estimated annual fund revenues to an annual budgeted reserve. Such appropriations must state a specific dollar amount and must be made before the tax rate is set. Appropriations from the annual budgeted reserve must also state a specific dollar amount and can be made for any community preservation purpose during the fiscal year only. Any unappropriated balance in the annual budgeted reserve at the close of the fiscal year closes to the CP Fund balance. (See below for more information on CP Fund balance.)

A community should vote an annual budgeted reserve if it wants the flexibility to use any annual revenues not appropriated or reserved for a particular community preservation purpose after the tax rate is set.

- (3) Community Preservation Fund Balance – The unspent and unencumbered balance as of year-end that results from (1) actual collections of annual and miscellaneous fund revenues (except bond proceeds) that exceed expenditures and reservations from estimated annual revenues, (2) actual expenditures and encumbrances that are less than appropriations and (3) unspent and unencumbered balance remaining in the Annual Budgeted Reserve.

CP Fund Balance is an available financing source only after the accounting officer closes the municipal accounts for the previous fiscal year and determines the amount of the CP Fund Balance. Appropriations from CP Fund Balance must state a specific dollar amount and can be made during the fiscal year until June 30 when its availability expires. The accounting officer then closes the municipal accounts for the year and determines a new CP Fund Balance for the ensuing fiscal year. The accounting officer must report the year-end CP Fund Balance to the Bureau of Accounts. (See Section IX below on Annual Reporting Requirements.)

The accounting officer should provide a copy of the annual report to the CPC and other boards or officers with financial responsibilities in order to notify them of the CP Fund Balance available for appropriation through the end of the current fiscal year.

- (4) Community Preservation Fund Surplus Bond Proceeds - The unspent and unencumbered balance of proceeds from bonds at the completion or abandonment of a community preservation project for which debt was issued. Appropriations from this source are restricted to a community preservation purpose for which borrowing may be authorized for the same or longer term than the original loan. [G.L. c. 44, § 20](#). (See Section VII-E below for more information regarding appropriations and expenditures from surplus bond proceeds.)

(For more information, see chart “Community Preservation Fund Financing Sources”, Attachment VI-1 below; Sample Appropriation Vote Annual Community Preservation Program Budget, Attachment VI-2 below; and Sample Votes from Community Preservation Fund Financing Sources, Attachment VI-3 below.)

### 3. Wind-down of Fund on CPA Revocation

If a community revokes its acceptance of the CPA pursuant to [G.L. c. 44B, § 16\(b\)](#), all outstanding obligations, including future debt service payments and deficits that are to be financed from CP Fund revenues, must be identified and a determination made whether there are sufficient uncommitted monies available within the fund to meet those obligations. Uncommitted monies include: undesignated fund balance, any annual revenues not yet committed and appropriated and reserve balances that can be used for the purposes of the obligations. This would include the balance in an annual budgeted reserve and, if for payment of a loan issued to purchase open space, monies in an open space reserve.

#### a. When Sufficient Funds Exist To Meet Obligations

If there are sufficient uncommitted monies available within the fund to meet outstanding obligations, the assessment of the surcharge will cease at the end of the fiscal year. The funds needed to pay the remaining obligations should be reserved by the accounting officer and the community should not undertake any new obligations unless they can be funded with remaining unreserved funds or alternatively, with monies from other municipal financing sources. Appropriations from any fund monies remaining after all obligations have been satisfied are restricted to community preservation purposes; however, because the CPA has been revoked, recommendations from the CPC are no longer required unless the municipality’s CPC by-law or ordinance provides otherwise. After revocation, a community cannot authorize new borrowings under

[G.L. c. 44B, § 11](#) and there will be no new 10 percent minimum annual spending requirements for open space (including land for recreational use), historic preservation and community housing. After the surcharge collections cease, the resulting state trust fund distributions will cease. CP Fund operations continue only for the purpose of winding down the fund.

b. When Insufficient Funds Exist To Meet Obligations

If there are not sufficient uncommitted monies available within the fund to meet outstanding obligations, the surcharge must continue to be assessed until sufficient funds become available to pay the remaining obligations. If the surcharge would generate significantly more revenues than necessary, the community may, pursuant to [G.L. c. 44B, § 16\(a\)](#), amend, with prior approval of the Director of the Bureau of Accounts, the surcharge to a percentage that will provide the revenues needed to fund the obligations. See Section I-E above for amendment procedure. As stated above, appropriations from any fund monies are restricted to community preservation purposes; however, because the CPA has been revoked, recommendations from the CPC are no longer required unless the municipality's CPC by-law or ordinance indicates otherwise. After revocation, a community cannot authorize new borrowings under [G.L. c. 44B, § 11](#) and there will be no new 10 percent minimum annual spending requirements for open space (including land for recreational use), historic preservation and community housing. As long as the surcharge is imposed, the community will be eligible for state trust fund distributions.

For example, Anytown revokes the CPA while it has an anticipated \$1 million in CPA debt service outstanding on debt issued to fund open space acquisitions. It has \$300,000 in fund balance, \$250,000 in the Community Housing reserve and \$200,000 in the Historic Resources reserve. Anytown will receive a state trust fund distribution estimated at \$75,000 next FY because it assessed a surcharge this year. The historic and housing reserves can only be used for those purposes and continue to be available for appropriation for eligible projects at any time until exhausted. Therefore, there is \$375,000 available to reserve for appropriation for the debt service (fund balance \$300,000 and anticipated trust distribution \$75,000) as it becomes due in future years. Consequently, Anytown will have to continue to assess a surcharge for one or more years in order to accumulate the additional \$625,000 needed to cover the debt service. Any extra monies left after it has reserved enough additional revenues from surcharges (plus trust fund distributions and investment earnings it receives while it winds down the fund) can be appropriated for any community preservation purpose. After revocation, the surcharge is only assessed to wrap up the fund, so there is no longer an obligation to allocate 10 percent of each of those year's revenues to the three community preservation spending purposes.

Communities do not have the option of ending the surcharge and undertaking to pay outstanding obligations from the tax levy. [G.L. c. 44B, § 16\(b\)](#). However, if a community pays all outstanding obligations in full using tax levy or available funds, the surcharge will cease at the end of the fiscal year.

(See Section I above for an explanation of CPA acceptance, amendment and revocation procedures.)

## **B. Massachusetts Community Preservation Trust Fund**

### 1. Trust Fund

A Community Preservation Trust Fund is established on the state level for the benefit of cities and towns participating in the community preservation program. [G.L. c. 44B, § 9](#). The state treasurer is the custodian of the fund and is responsible for its investment. All interest and earnings on fund revenues belong to the fund.

Monies distributed from the state trust fund will come primarily from surcharges on fees charged for recording various documents with the Registry of Deeds or Land Court. The trust fund will also be credited with public or private gifts, grants or donations to the state for community preservation purposes and other monies transferred to the fund by the state legislature or otherwise by law.

### 2. Trust Fund Administration

The Department of Revenue (DOR) is responsible for administering and managing disbursements from the trust fund and certifying those amounts to the state treasurer for payment to participating cities and towns. The trust fund will be charged for administrative and operating expenses incurred by the DOR in an amount not to exceed five percent of annual trust fund revenues.

### 3. Trust Fund Distributions

On or before November 15 of each year, distributions will be made from the trust fund to each city or town that imposed a surcharge for the fiscal year that ended on the preceding June 30.

The distribution formula includes up to three distribution rounds. All communities that imposed a surcharge the previous year will receive first round distributions. The following communities qualify for any second and third round distributions:

- Communities that assessed the maximum three percent surcharge; and
- Communities that accepted the CPA pursuant to [G.L. c. 44B, § 3\(b½\)](#) and assessed a surcharge of at least one percent and appropriated additional funds to the CP Fund so that the total equals three percent of

the real estate tax levy. (Communities that have accepted the CPA pursuant to [G.L. c. 44B, § 3\(b\)](#) are not eligible to appropriate additional funds to the CP Fund pursuant to [G.L. c. 44B, § 3\(b\)½](#) for state trust fund matching purposes unless they follow the amendment process in [G.L. c. 44B, § 16\(a\)](#) and adopt [G.L. c. 44B, § 3\(b\)½](#). See Sections I-E and III above.)

If less than 10 percent of cities and towns imposed a surcharge the previous year, the DOR may use only one round or other equitable method to calculate the annual distribution amount.

a. Maximum Distribution

The maximum amount a city or town can receive in any year from the trust fund is 100 percent of the total surcharge assessed for the previous fiscal year or, in the case of a city or town that accepted the CPA pursuant to [G.L. c. 44B, § 3\(b\)½](#), 100 percent of the total surcharge assessed for the previous fiscal year plus additional funds appropriated in that fiscal year by the city or town to the CP Fund. This amount must be reported to the DOR annually by September 15. (See Section IX below for Annual Reporting Requirements.)

b. First Round Match Distribution

All communities that imposed a surcharge the previous year will receive first round match distributions. Eighty percent of the fund balance after administrative expenses will be split among eligible communities. Each community will receive at least five percent, but no more than 100 percent, of the total surcharge assessed the previous year or, in the case of a community that accepted the CPA pursuant to [G.L. c. 44B, § 3\(b\)½](#), the total surcharge assessed the previous year plus the additional funds appropriated in that fiscal year to the CP Fund.

c. Second Round Equity Distribution

If the monies in the fund are not fully distributed after the first round, second round equity distributions using the following needs-based formula will be made to communities that adopted the maximum three percent surcharge and communities that accepted the CPA pursuant to [G.L. c. 44B, § 3\(b\)½](#) and imposed a surcharge of at least one percent and appropriated other funds to the CP Fund so that the total equals three percent of the real estate tax levy.

- (1) Step 1. A *base figure* for the equity distribution is determined by dividing the remaining fund balance by the number of cities and towns receiving match distributions.
- (2) Step 2. A *community preservation (CP) raw score* is determined for each city and town in the commonwealth. Each community is

ranked from highest to lowest by equalized valuation per capita and population. The two ranks are added together and divided by two to arrive at the CP raw score for each community.

- (3) Step 3. A *CP rank* is determined for each city and town in the commonwealth by ordering the CP raw scores from lowest to highest. If more than one community has the same raw score, the community with the higher equalized valuation rank receives the higher CP rank.
- (4) Step 4. The cities and towns are divided into *deciles* based on their CP rank. The communities with the highest CP rank are placed in the lowest decile category starting with decile 10.
- (5) Step 5. The *equity distribution amount* for each qualifying city or town is determined by multiplying the Step 1 base figure by the following percentages assigned to the Step 4 decile category of the community.

Decile 1	140 percent of the base figure
Decile 2	130 percent of the base figure
Decile 3	120 percent of the base figure
Decile 4	110 percent of the base figure
Decile 5	100 percent of the base figure
Decile 6	90 percent of the base figure
Decile 7	80 percent of the base figure
Decile 8	70 percent of the base figure
Decile 9	60 percent of the base figure
Decile 10	50 percent of the base figure

d. Third Round Surplus Distribution

If there are monies still left in the fund, the DOR may also make a third round surplus distribution as follows to the communities that received a second round distribution:

- (1) Step 1. A *base figure* for the surplus distribution is determined by dividing the remaining fund balance by the number of cities and towns receiving first round match distributions.
- (2) Step 2. The *surplus distribution amount* for each qualifying city or town is determined by multiplying the Step 1 base figure by the same percentage used in the equity distribution for the community.

### C. **Supplemental Appropriations**

Appropriations may be made from other municipal funding sources, such as the tax levy, free cash or other available funds, to supplement and carry out community preservation projects. [G.L. c. 44B, § 5\(d\)](#). Those appropriations should be treated as special purpose appropriations which do not close out at fiscal year-end. Such appropriations, however, may not be appropriated directly into the CP Fund. Special purpose appropriations are distinguished from an appropriation of additional funds by a community that has accepted the CPA pursuant to [G.L. c. 44B, § 3\(b½\)](#). Appropriations of additional funds pursuant to G.L. c. 44B, § 3(b½) are appropriated to the CP Fund. (See Section III above.)

## VII. **BORROWING**

Cities and towns may issue general obligation bonds or notes to fund community preservation acquisitions and projects subject to the applicable provisions of [G.L. c. 44](#), which govern the issuance of municipal debt. [G.L. c. 44B, § 11](#). Bond proceeds are to be deposited into the CP Fund. [G.L. c. 44B, § 7\(i\)](#). Although debt issued under c. 44B is general obligation debt, the CPA limits the amount a community may borrow to an amount where the debt service can be paid (together with debt service on any previously authorized borrowings) from the annual community preservation revenues that the community reasonably expects to raise pursuant to [G.L. c. 44B, § 3](#) (surcharge and additional funds pursuant to § 3(b½)) over the term of the borrowing. If for some unforeseen reason, the monies raised from these annual revenues alone should prove insufficient, the debt service must be paid from any other community preservation fund monies available for that purpose and if fund monies are insufficient, from other available municipal funds. The CPA also suggests, but does not mandate, that communities make every effort to limit issuance costs by participating in pooled loan programs and through cost sharing arrangements.

### A. **Purposes and Terms**

Debt authorized under the CPA is limited to those purposes and maximum terms found in [G.L. c. 44, §§ 7 and 8](#). For example, a community may borrow for up to 30 years to fund acquisitions of land for a community preservation purpose, such as open space, because borrowing for municipal land acquisition is allowed under [G.L. c. 44, § 7\(1\)](#) for up to 30 years. The applicable borrowing periods are either established in [c. 44](#) or in the [Director of Accounts Guidelines Asset Useful Life Schedules and Maximum](#)

[Borrowing Terms](#). A community may not, however, borrow to fund a CPA project if the project is not one for which a municipality is otherwise authorized to borrow. For example, a community may not borrow to fund a cash grant to a non-profit to rehabilitate a historic building owned by the non-profit (assuming the grant does not violate the *Anti-aid Amendment* – see Section V-C-5 above). This is because borrowing to fund a cash grant or to rehabilitate a privately-owned building is not an allowable municipal borrowing purpose. However, a municipality could borrow to fund the acquisition of a historic preservation easement on the historic building because a municipality may borrow under [G.L. c. 44, § 7\(1\)](#) to acquire an interest in real estate.

Community preservation funds cannot be used to pay the debt service on borrowings authorized before the CPA was adopted, even if the borrowing was for an allowable community preservation purpose. Fund monies can only be used for debt service on borrowings authorized pursuant to [G.L. 44B § 11](#). Once a community authorizes a borrowing with another financing source for debt service, it cannot amend or change the financing source to a community preservation fund financing source. This is prohibited under the “non-supplanting” provision of the CPA. [G.L. c. 44B, § 6](#).

**B. Temporary and Permanent Borrowing**

Communities should initially use temporary debt to finance community preservation acquisitions and initiatives in order to ensure there are no unspent bond proceeds if an acquisition or initiative unexpectedly fails to close for any reason. Bond anticipation notes may be issued for community preservation purposes in the same manner as any other municipal borrowing and may be cost effective in financing smaller acquisitions and initiatives. Permanent debt may be issued before or after completing a community preservation acquisition or initiative. When bonds are issued in advance of community preservation acquisitions or projects, communities should have an inventory of other eligible parcels or projects and should recognize the risk of incurring an Internal Revenue Service arbitrage rebate penalty. If an arbitrage penalty is incurred, however, it should be paid from the CP Fund.

**C. Amount Borrowed**

A community should refrain from borrowing the maximum amount of debt that could be supported by annual revenues because collection rates and administrative expenses will reduce the actual amount available for debt service payments.

**D. Repayment Terms**

Debt service payments may be made on a “level debt service” or “equal principal” basis. A community may also choose to repay community preservation loans using a schedule that provides for a more rapid amortization of principal if supported by annual fund revenues.

**E. Surplus Bond Proceeds**

In general, the unspent and unencumbered balance of proceeds from bonds at the completion or abandonment of a project for which debt was issued are available funds



for restricted purposes under [G.L. c. 44, § 20](#). Surplus bond proceeds in any amount may be appropriated for any purpose for which the city or town may borrow for an equal or greater term than the term of the loan from which the surplus resulted. Surplus bond proceeds of \$50,000 or less remaining after completion of a project, however, may be applied to the payment of any debt service with the approval of the chief executive officer. In a town, the chief executive officer is the board of selectmen, in a city, the mayor. For more information, see IGR 17-21, Borrowing, Section VIII.

Surplus bond proceeds remaining after a CPA project is completed or abandoned also remain subject to the restrictions of the CPA under [G.L. c. 44B](#). As a result, such surplus bond proceeds may only be appropriated (1) upon a recommendation of the CPC to the legislative body and (2) for a CPA purpose for which the community could borrow for the same or longer term than the original loan. If the surplus remaining after a CPA project is completed is \$50,000 or less, however, the surplus may be applied to the payment of debt service, but only to the debt service of another CPA borrowing and only upon the approval of both the chief executive officer and the CPC.

For example, if there are available surplus bond proceeds in any amount after the completion of an open space acquisition financed with community preservation funds, the surplus may be appropriated, upon the recommendation of the community preservation committee, for another community preservation purpose for which the city or town may borrow for an equal or greater term than the term for which that loan was issued. If the available surplus is \$50,000 or less, however, the surplus may be applied to the payment of debt service for another community preservation borrowing, upon the recommendation of the community preservation committee and the approval of the chief executive officer. [G.L. c. 44B, §§ 5\(b\)\(2\) and \(d\) and 7](#).

#### **F. Treatment of Bond Premiums and Accrued Interest**

Premiums (net of issuance costs) and accrued interest received on bonds or notes authorized pursuant to [G.L. 44B § 11](#) and sold on or after November 7, 2016, must either be:

1. Used to pay project costs and to reduce the amount of the borrowing by the same amount when the borrowing vote so authorizes; or
2. Reserved for appropriation for allowable CPA capital projects for which a loan has been, or may be, authorized for an equal or longer period of time than the loan for which the premiums were received. [G.L. c. 44, § 20](#). A recommendation of the CPC is required for an appropriation of bond premiums or accrued interest. [G.L. c. 44B, §§ 5\(b\)\(2\), 5\(d\), 7](#). For more information, see IGR 17-21, Borrowing, Section V.

#### **G. Surcharge Expiration**

If a community revokes its acceptance of the CPA, the surcharge expires once all obligations, including debt service, that are to be financed from CP Fund revenues are funded. (See Section VI-A-3 above for Wind-down of Fund on CPA Revocation.)

## **H. Legislative Body Vote**

A recommendation of the Community Preservation Committee and approval of the legislative body by a two-thirds vote is required to authorize a borrowing. [G.L. c. 44B, § 11](#) and [G.L. c. 44, § 2](#). The vote should specifically state that the borrowing is pursuant to [G.L. c. 44B, § 11](#).

(See Sample Community Preservation Appropriation Vote - Includes Borrowing Authorization, Attachment VII-1 below.)

## **VIII. COMMUNITY PRESERVATION PROPERTY**

### **A. Acquisition**

Upon recommendation of the CPC, a city or town may acquire, or take by eminent domain, interests in real estate for allowable community preservation purposes. A two-thirds vote of its legislative body is required to take the interest by eminent domain. [G.L. c. 44B, § 5\(e\)](#); [G.L. c. 79](#). All other acquisitions require a majority vote of its legislative body. Real estate interests acquired or taken using monies from the CP Fund may be located in another Massachusetts city or town. [G.L. c. 44B, § 6](#).

An acquisition of an interest in real property with community preservation funds is not subject to the procurement requirements of [G.L. c. 30B, § 16](#); however, notwithstanding the provisions of [G.L. c. 40, § 14](#), the price of a real property interest acquired with community preservation funds must not exceed the value of the property determined through procedures customarily accepted by appraising professionals as valid. [G.L. c. 44B, § 5\(f\)](#).

### **B. Ownership and Management**

The city or town must own any real property interest acquired or taken with community preservation monies. Management of the properties may be delegated by the legislative body to the conservation commission, historical commission, park commission or housing authority, as appropriate, or to a nonprofit corporation created under [G.L. c. 180](#) or nonprofit trust created under [G.L. c. 203](#). Management of properties acquired for future wellhead development may be delegated by the legislative body to a water, water supply or fire district. [G.L. c. 44B, § 12\(b\)](#).

### **C. Usage Restrictions**

Real property interests financed in whole or in part with CP Fund monies must be bound by a permanent restriction, recorded as a separate instrument, which limits the use of the property to the purpose for which it was acquired. The restriction must conform to the requirements of [G.L. c. 184, §§ 31-34](#).

#### **D. Damage**

A city or town, or the attorney general upon request of the city or town, may bring a civil action to recover damages, including punitive damages, from, or seek injunctive relief against, persons who knowingly damage or steal any real property acquired by the city or town using community preservation monies. Damages, costs and interest recovered must be credited to the CP Fund. The superior court has jurisdiction in these cases. [G.L. c. 44B, § 15](#).

#### **E. Disposition**

The proceeds obtained from the disposal of any real estate interest acquired with monies from the CP Fund must be credited to the Fund. [G.L. c. 44B, § 7\(iv\)](#). If the original financing source for the acquisition was restricted, i.e., from the open space special purpose restricted reserve, then the disposition proceeds should be credited to that special purpose restricted reserve.

Although acquisitions of interests in real estate with community preservation funds are specifically exempted from the procurement requirements of [G.L. c. 30B, § 16](#), there is no similar exemption from procurement requirements for dispositions of interests in real estate acquired with community preservation funds. [G.L. c. 44B, § 5\(f\)](#). As a result, a municipality must follow the applicable procurement procedures regarding a disposal of real estate when the real estate is acquired with community preservation funds. If the real estate will be disposed subject to the applicable restriction (described in Section C above), the municipality must follow applicable general legal requirements regarding the disposition of municipal real estate. If the community has determined to dispose of the real estate without the restriction (i.e., it has been determined that it is impossible to develop planned recreational fields on a site due to latent site constraints), then the community must also follow the restriction release procedures set forth in [G.L. c. 184, § 32](#). In addition, Article 97 of the Amendments to the Massachusetts Constitution may apply to a real estate disposition. [Mass. Const. Amend. art. 97](#). Municipal legal counsel should be involved whenever a community proposes an acquisition or disposition of an interest in real estate.

### **IX. ANNUAL REPORTING REQUIREMENTS**

Community preservation communities are required to submit information regarding the CP Fund annually as follows:

- Form CP-1, “*Community Preservation Surcharge Report*,” submitted via the [DLS Gateway System](#) under Miscellaneous Forms, Year End Accounting, to the DLS Data Analytics and Resources Bureau (DARB) by September 15.
- Form CP-2, “*Community Preservation Fund Report*,” submitted via the [DLS Gateway System](#) under Miscellaneous Forms, Year End Accounting, to the Bureau of Accounts by October 31.

- Schedule A-4, “*Community Preservation Fund, Chapter 44B*,” submitted via the [DLS Gateway System](#) under Taxrate, Tax Rate – BOA, to the Bureau of Accounts.
- Part 3, Special Revenue Funds, “*Schedule A*,” submitted via the [DLS Gateway System](#) under Schedule A, to the Bureau of Accounts.
- Form CP-3, “*Community Preservation Initiatives Report*,” to the EOEEA by September 15. The Form CP-3 is available from [Mass GIS](#) after entering your community’s password provided by DARB. (Note that under [G.L. c. 44, § 55C\(a\),\(c\)\(1\)](#), a municipal affordable housing trust is required to expend any CP funds it receives exclusively for allowable CP community housing purposes under [G.L. c. 44B, § 5\(b\)\(2\)](#), account for such funds separately and, at the end of the fiscal year, report the expenditure of such funds to the CPC for inclusion in the Form CP-3.)

## **X. ACCOUNTING ISSUES**

In order to segregate all sources of revenue and expenses associated with the CPA program into one fund, all activity should be recorded in a special revenue fund. Revenues recorded in the CP Fund, other than revenues from bond and note proceeds, are subject to appropriation. The following is a list of CP activity and their respective accounting treatment.

- A. The assessors will issue a separate notice of commitment for the community preservation surcharge, which will be recorded by the accounting officer in the CP Fund.
- B. Collections reported will be recorded directly into the CP Fund.
- C. Amounts received from the state Massachusetts Community Preservation Trust Fund will be recorded in the CP Fund.
- D. All expenditures of community preservation funds should be recorded as a direct expenditure in the CP Fund.
- E. Actual revenues should close to the CP Fund balance at the end of the year.
- F. Amounts appropriated for administrative and operating expenses of the CPC are considered annual operating expenses and any unspent and unencumbered balance should be closed to the CP Fund balance at the end of the fiscal year.
- G. The unspent and unencumbered balance of an appropriation for a community preservation project, including a particular acquisition or initiative, should be closed to the CP Fund financing source from which the appropriation was funded. Unless the community has, by charter, by-law or ordinance, established a different procedure for closing special purpose appropriations, the appropriation should close after notice from the CPC that the appropriation purpose has been completed.

- H. Revenue from bond proceeds should be recorded as another financing source directly to the CP Fund. However, if a project is expected to include improvements that will take place over a period of longer than one year, a capital project fund may be established.
- I. Short-term notes should be recorded as a liability in the CP Fund.
- J. Amounts appropriated or reserved from estimated annual CP Fund revenues or from other fund financing sources should be reported on the tax rate recapitulation sheet via the [DLS Gateway System](#) as an appropriation from the CP Fund on page 4. Schedule A-4 must be submitted with the recapitulation to document fund revenues and appropriations.
- K. Revenue deficits in the CP Fund that result from a fiscal year's operations (actual revenues, expenditures and reservations) comparing unfavorably to the approved budget (budgeted revenues, appropriations and reservations) for the year must be reported on the Schedule A-4 submitted with the tax rate recapitulation in [Gateway](#) and raised from the current year's annual fund revenues.
- L. If acceptance of the CPA is revoked, any unspent and unencumbered CP Fund revenues and available funds at that time must be reserved for the payment of existing obligations, including future debt service and deficits.

(Please refer to Attachment X-1 below for sample of Budgetary and Actual Accounting entries for recording reservations, commitments, liens, and abatements.)

**XI. ATTACHMENTS**

**Attachment I-1**

**COMMUNITY PRESERVATION ACT  
ACCEPTANCE**

**SAMPLE LANGUAGE**

**(Samples should not be used without the advice of municipal counsel.)**

**SAMPLE LEGISLATIVE BODY VOTE**

**G.L. c. 44B, § 3(b)**

**ARTICLE/ORDER:** To see if the city/town will vote to accept General Laws Chapter 44B §§ 3-7, known as the Community Preservation Act, which establishes a special “Community Preservation Fund” that may be appropriated and spent for certain open space, historic resources and community housing purposes; and to approve under Section 3(b) of G.L. c. 44B a property tax surcharge in an amount not to exceed 3% of the taxes assessed annually on real property, which will be dedicated to the Fund and be imposed starting with taxes assessed for fiscal year \_\_\_\_\_ beginning on July 1, \_\_\_\_\_; [and to exempt from the surcharge any or all of the following: (1) property owned and occupied as a domicile by a person who would qualify for low income housing or low or moderate income senior housing in the community as defined in the Act; (2) Class Three, Commercial, and Class Four, Industrial, real property in any year the town adopts a higher tax rate for those classes; (3) the real estate tax on \$100,000 of the assessed valuation of Class One, Residential, parcels; or (4) the real estate tax on \$100,000 of the assessed valuation of Class Three, Commercial, and Class Four, Industrial parcels,] or take any other action relative thereto.

**MOTION:** Moved/ordered that the city/town vote to accept General Laws Chapter 44B §§ 3-7, known as the Community Preservation Act, which establishes a special “Community Preservation Fund” that may be appropriated and spent for certain open space, historic resources and community housing purposes; and to approve under Section 3(b) of G.L. c. 44B a property tax surcharge that shall be in the amount of \_\_\_ % of the taxes assessed annually on real property, which will be dedicated to the Fund and be imposed starting with taxes assessed for fiscal year \_\_\_\_\_ beginning on July 1, \_\_\_\_\_; [and to exempt from the surcharge the following: insert applicable exemptions, if any].

**G.L. c. 44B, § 3(b½)**

**ARTICLE/ORDER:** To see if the city/town will vote to accept General Laws Chapter 44B §§ 3-7, known as the Community Preservation Act, which establishes a special “Community Preservation Fund” that may be appropriated and spent for certain open space, historic resources and affordable housing purposes; and to approve under Section 3(b½) of Chapter 44B: (1) a property tax surcharge in an amount not less than 1% of the taxes assessed annually on real property and (2) the appropriation of other municipal revenues into the Fund in an amount up to 2% of the taxes assessed annually on real property, such surcharge and supplemental appropriations shall, when added together, not exceed 3% of the taxes assessed annually on real property and shall be dedicated to the Fund, the surcharge to be imposed and appropriations made starting in fiscal year \_\_\_\_\_ beginning on July 1, \_\_\_\_\_; [and to

exempt from the surcharge any or all of the following: (1) property owned and occupied as a domicile by a person who would qualify for low income housing or low or moderate income senior housing in the community as defined in the Act; (2) Class Three, Commercial, and Class Four, Industrial, real property in any year the town adopts a higher tax rate for those classes; (3) the real estate tax on \$100,000 of the assessed valuation of Class One, Residential, parcels; or (4) the real estate tax on \$100,000 of the assessed valuation of Class Three, Commercial, and Class Four, Industrial parcels,] or take any other action relative thereto.

**MOTION:** Moved/ordered that the city/town vote to accept General Laws Chapter 44B §§ 3-7, known as the Community Preservation Act, which establishes a special “Community Preservation Fund” that may be appropriated and spent for certain open space, historic resources and affordable housing purposes; and to approve under Section 3(b½) of Chapter 44B: (1) a property tax surcharge in an amount of \_\_\_% (not less than 1%) of the taxes assessed annually on real property and (2) the appropriation of other municipal revenues into the Fund in an amount up to \_\_\_% (not more than 2%) of the taxes assessed annually on real property, such surcharge and supplemental appropriations shall, when added together, not exceed 3% of the taxes assessed annually on real property and shall be dedicated to the Fund, the surcharge to be imposed and appropriations made starting in fiscal year \_\_\_\_\_ beginning on July 1, \_\_\_\_\_; [and to exempt from the surcharge the following: insert applicable exemptions, if any].

### SAMPLE PETITION

#### G.L. c. 44B, § 3(b)

We the undersigned request that the question of accepting sections 3 to 7 of Chapter 44B of the General Laws of Massachusetts, also known as the Community Preservation Act, which establishes a special “Community Preservation Fund” that may be appropriated and spent for certain open space, historic resources and affordable housing purposes be placed on the ballot for the next regular \_\_\_\_\_ [municipal or state] election. Acceptance will approve under Section 3(b) of Chapter 44B a property tax surcharge of \_\_\_% (not more than 3%) of the taxes assessed annually on real property, which will be dedicated to the Fund and imposed starting with taxes assessed for fiscal year \_\_\_\_\_ beginning on July 1, \_\_\_\_\_. [It would also exempt the following from the surcharge: insert applicable exemptions, if any].

#### G.L. c. 44B, § 3(b½)

We the undersigned request that the question of accepting sections 3 to 7 of Chapter 44B of the General Laws of Massachusetts, also known as the Community Preservation Act, which establishes a special “Community Preservation Fund” that may be appropriated and spent for certain open space, historic resources and affordable housing purposes be placed on the ballot for the next regular \_\_\_\_\_ [municipal or state] election. Acceptance will approve under Section 3(b½) of Chapter 44B: (1) a property tax surcharge of \_\_\_% (not less than 1%) of the taxes assessed annually on real property and (2) the appropriation of other municipal revenues into the Fund in an amount up to \_\_\_\_\_% (not more than 2%) of the taxes assessed annually on real property, such surcharge and supplemental appropriations shall, when added together, not exceed 3% of the taxes assessed annually on real property and shall be dedicated to the Fund, the surcharge to be imposed and appropriations made starting in fiscal year \_\_\_\_\_ beginning on July 1, \_\_\_\_\_; [and to exempt from the surcharge the following: insert applicable exemptions, if any].



## BALLOT QUESTION

(The following acceptance question must be used. See [G.L. c. 44B, § 3\(f\)](#))

Shall this (city or town) accept sections 3 to 7, inclusive of chapter 44B of the General Laws, as approved by its legislative body, a summary of which appears below?

### SAMPLE FAIR AND CONCISE SUMMARY

Sections 3 to 7 of Chapter 44B of the General Laws of Massachusetts, also known as the Community Preservation Act, establish a dedicated funding source to enable cities and towns to (1) acquire, create and preserve open space, which includes land for park and recreational uses and the protection of public drinking water well fields, aquifers and recharge areas, wetlands, farm land, forests, marshes, beaches, scenic areas, wildlife preserves and other conservation areas, (2) rehabilitate and restore land for recreational use, (3) acquire, preserve, rehabilitate and restore historic buildings and resources, (4) acquire, create, preserve and support affordable housing and (5) rehabilitate and restore open space and affordable housing that was acquired or created with community preservation funds.

If these sections are accepted, the funding sources for these community preservation purposes in (MUNICIPALITY) under Section 3(b)[or (b<sup>1/2</sup>)] of Chapter 44B will be (1) a surcharge of \_\_\_ % on the annual property tax assessed on real property and (2) annual distributions made by the state from a trust fund created by the Act; [and if the CPA is accepted under Section 3(b<sup>1/2</sup>), (3) appropriations by the (city council/the town council/town meeting) from other municipal revenue sources in an amount up to \_\_\_% of the annual property taxes assessed on real property.] The surcharge will be assessed [and if accepted under Section 3(b<sup>1/2</sup>), appropriations made] starting in fiscal year \_\_\_\_\_, which begins on July 1, \_\_\_\_\_. [The following will be exempt from the annual surcharge: (1) property owned and occupied as a domicile of a person who qualifies for low income housing, or low or moderate income senior housing, as defined in the Act; (2) real property defined as commercial or industrial for property tax classification purposes under G.L. c. 59, § 2A in years a higher tax rate is adopted for those properties; (3) the real estate tax assessed on \$100,000 of the value of each parcel of residential real property as defined for property tax classification purposes; and (4) the real estate tax assessed on \$100,000 of the value of each parcel of commercial or industrial property as defined for property tax classification purposes.] A taxpayer receiving a regular property tax abatement or exemption will also receive a pro rata reduction in the surcharge.

A Community Preservation Committee will be established by [ordinance/by-law] to study community preservation resources, possibilities and needs and to make annual recommendations to (the city council/the town council/town meeting) on spending the funds. At least 10% of the revenues for each fiscal year will be spent or reserved for later spending on each of the Act's community preservation purposes: (1) open space including land for recreational uses, (2) historic resources and (3) affordable housing.



**Attachment I-2**

**COMMUNITY PRESERVATION ACT  
AMENDMENTS**

**G.L. c. 44B, § 16(a)**

**SAMPLE LANGUAGE**

**(Samples should not be used without the advice of municipal counsel.)**

**LEGISLATIVE BODY VOTES**

**SAMPLE SURCHARGE RATE AMENDMENT**

**ARTICLE/ORDER:** To see if the city/town will amend the surcharge imposed under section 3 of chapter 44B of the General Laws, the Community Preservation Act, from \_\_ % to \_\_ % of the taxes assessed annually on real property, starting with taxes assessed for the fiscal year beginning on July 1, \_\_\_\_\_.

**MOTION:** Moved/ordered that the city/town vote to amend the surcharge imposed under section 3 of chapter 44B of the General Laws, the Community Preservation Act, from \_\_ % to \_\_ % of the taxes assessed annually on real property, starting with taxes assessed for the fiscal year beginning on July 1, \_\_\_\_\_.

**SAMPLE EXEMPTION AMENDMENT**

**ARTICLE/ORDER:** To see if the city/town will adopt/eliminate the exemption from the property tax surcharge imposed under section 3 of chapter 44B of the General Laws, the Community Preservation Act, for [state exemption], starting with taxes assessed for the fiscal year beginning on July 1, \_\_\_\_\_.

**MOTION:** Moved/ordered that the city/town vote to adopt/eliminate the exemption from the property tax surcharge imposed under section 3 of chapter 44B of the General Laws, the Community Preservation Act, for [state exemption], starting with taxes assessed for the fiscal year beginning on July 1, \_\_\_\_\_.

**SAMPLE AMENDMENT TO ALLOW APPROPRIATION OF ADDITIONAL MUNICIPAL REVENUE TO COMMUNITY PRESERVATION FUND UNDER SECTION 3(b½)**

**ARTICLE/ORDER:** To see if the city/town will vote to amend its acceptance of the Community Preservation Act and accept the Act under Section 3(b½) of Chapter 44B of the General Laws, amend the surcharge imposed under section 3 of chapter 44B of the General Laws from \_\_ % to \_\_ % (surcharge must not be less than 1%) and approve annual appropriations of other municipal revenues into the Community Preservation Fund under Section 3(b½) of Chapter 44B in an amount up to \_\_\_ % (not more than 2%) of the taxes assessed annually on real property, such surcharge and supplemental appropriations shall, when added together, not exceed 3 % of the taxes assessed annually on real property and shall be dedicated to the Fund, starting with taxes assessed and appropriations made for the fiscal year beginning on July 1, \_\_\_\_\_.

**MOTION:** Moved/ordered that the city/town vote to amend its acceptance of the Community Preservation Act and accept the Act under Section 3(b½) of Chapter 44B of the General Laws, amend the surcharge imposed under section 3 of chapter 44B of the General Laws from \_\_\_ % to \_\_\_ % (surcharge must be not less than 1%) and approve annual appropriations of other municipal revenues into the Community Preservation Fund under Section 3(b½) of Chapter 44B in an amount up to \_\_\_ % (not more than 2%) of the taxes assessed annually on real property, such surcharge and supplemental appropriations shall, when added together, not exceed 3 % of the taxes assessed annually on real property and shall be dedicated to the Fund, starting with taxes assessed and appropriations made for the fiscal year beginning on July 1, \_\_\_\_.

### **BALLOT QUESTION**

Shall this (city or town) amend its acceptance of sections 3 to 7, inclusive of chapter 44B of the General Laws, as approved by its legislative body, a summary of which appears below?

### **SAMPLE FAIR AND CONCISE SUMMARY**

City/town accepted Sections 3 to 7 of Chapter 44B of the General Laws of Massachusetts, also known as the Community Preservation Act, and established a “Community Preservation Fund” with a dedicated funding source. Fund monies may be spent to (1) acquire, create and preserve open space, which includes land for park and recreational uses and the protection of public drinking water well fields, aquifers and recharge areas, wetlands, farm land, forests, marshes, beaches, scenic areas, wildlife preserves and other conservation areas, (2) rehabilitate and restore land for recreational use, (3) acquire, preserve, rehabilitate and restore historic buildings and resources, (4) acquire, create, preserve and support affordable housing and (5) rehabilitate and restore open space and affordable housing that was acquired or created with community preservation funds.

The funding source is a \_\_\_ % surcharge on the annual property tax assessed on real property [and if the CPA was accepted under Section 3(b½), appropriations from other municipal revenues]. [The city/town has adopted the following exemptions from the annual surcharge: (1) property owned and occupied as a domicile of a person who qualifies for low income housing, or low or moderate income senior housing, as defined in the Act; (2) real property defined as commercial or industrial for property tax classification purposes under G.L. c. 59, § 2A in years a higher tax rate is adopted for those properties; (3) the real estate tax assessed on \$100,000 of the value of each parcel of residential real property as defined for property tax classification purposes; and (4) the real estate tax assessed on \$100,000 of the value of each parcel of commercial or industrial property as defined for property tax classification purposes.]

This amendment will [(reduce/increase) the surcharge from (\_\_\_)% to (\_\_\_)%.] [(reduce/increase) the surcharge from (\_\_\_)% to (\_\_\_)% and approve (city council/town council/town meeting) appropriation of other municipal revenues into the Fund in an amount up to \_\_\_% of the annual property taxes assessed on real property, which when added together, the surcharge and appropriations into the Fund will not be more than 3% of the taxes assessed annually on real property.] [(add / eliminate) the following exemptions from the annual surcharge: (1) property owned and occupied as a domicile of a person who qualifies for low income housing, or low or moderate income senior housing, as defined in the Act; (2) real property defined as commercial or industrial for property tax classification purposes under G.L. c. 59, § 2A in years a higher tax rate is adopted for those properties; (3) the real estate tax

assessed on \$100,000 of the value of each parcel of residential real property as defined for property tax classification purposes; and (4) the real estate tax assessed on \$100,000 of the value of each parcel of commercial or industrial property as defined for property tax classification purposes.] This amendment will take effect starting in fiscal year \_\_\_\_\_, which begins on July 1, \_\_\_\_\_.

The surcharge will continue to be calculated in the same manner by multiplying the real estate tax on the parcel by the adopted percentage. A taxpayer receiving any other exemption or abatement of tax on real property receives a pro rata reduction in surcharge.

**Attachment I-3**

**COMMUNITY PRESERVATION ACT  
REVOCATION  
Must Follow Same Process as Acceptance  
G.L. c. 44B, § 16(b)**

**SAMPLE LANGUAGE**  
**(Samples should not be used without the advice of municipal counsel.)**

**SAMPLE LEGISLATIVE BODY VOTE**

**ARTICLE/ORDER:** To see if the city/town will vote to revoke the town's acceptance of Sections 3 to 7 of Chapter 44B of the General Laws, the Community Preservation Act, effective for the fiscal year beginning on July 1, \_\_\_\_\_.

**MOTION:** Moved/ordered that the city/town vote to revoke the town's acceptance of Sections 3 to 7 of Chapter 44B of the General Laws, the Community Preservation Act, effective for the fiscal year beginning on July 1, \_\_\_\_\_.

OR

**SAMPLE PETITION**

We the undersigned request that the question of revoking acceptance of sections 3 to 7 of Chapter 44B of the General Laws of Massachusetts, the Community Preservation Act, effective for the fiscal year beginning on July 1, \_\_\_\_\_, be placed on the ballot for the next regular municipal or state election.

**BALLOT QUESTION**

Shall this (city or town) revoke its acceptance of sections 3 to 7, inclusive of chapter 44B of the General Laws, as approved by its legislative body/proposed by a petition signed by at least five percent of the registered voters of this (city or town), a summary of which appears below?

**SAMPLE FAIR AND CONCISE SUMMARY**

City/town accepted Sections 3 to 7 of Chapter 44B of the General Laws of Massachusetts, also known as the Community Preservation Act, and established a "Community Preservation Fund" with a dedicated funding source. Fund monies may be spent to (1) acquire, create and preserve open space, which includes land for park and recreational uses and the protection of public drinking water well fields, aquifers and recharge areas, wetlands, farm land, forests, marshes, beaches, scenic areas, wildlife preserves and other conservation areas, (2) rehabilitate and restore land for recreational use, (3) acquire, preserve, rehabilitate and restore historic buildings and resources, (4) acquire, create, preserve and support affordable housing and (5) rehabilitate and restore open space and affordable housing that was acquired or created with community preservation funds. The funding source is a \_\_\_\_

% surcharge on the annual property tax assessed on real property [and if the CPA was accepted under Section 3(b½), appropriations from other municipal revenues]. [The city/town has adopted the following exemptions from the annual surcharge: (1) property owned and occupied as a domicile of a person who qualifies for low income housing, or low or moderate income senior housing, as defined in the Act; (2) real property defined as commercial or industrial for property tax classification purposes under G.L. c. 59, § 2A in years a higher tax rate is adopted for those properties; (3) the real estate tax assessed on \$100,000 of the value of each parcel of residential real property as defined for property tax classification purposes; and (4) the real estate tax assessed on \$100,000 of the value of each parcel of commercial or industrial property as defined for property tax classification purposes.]

A revocation of acceptance will take effect starting in fiscal year \_\_\_\_\_, which begins on July 1, \_\_\_\_\_. However, the surcharge will continue to be assessed in future years until monies in the Community Preservation Fund are sufficient to fully pay all community preservation obligations incurred by the city/town.

If acceptance is revoked, any monies remaining in the Community Preservation Fund must still be appropriated and spent only for the open space, historic and affordable housing purposes allowed by the Act.

## Attachment II-1

### COMMUNITY PRESERVATION SURCHARGE LOW/MODERATE INCOME EXEMPTION

#### Exemption Eligibility Requirements

1. **Applicant must own the property as of January 1.**  
May be (1) sole owner, (2) co-owner, (3) life tenant or (4) trustee with sufficient beneficial interest in property under terms of trust.
2. **Applicant must occupy the property as domicile as of January 1.**
3. **Applicant and each co-owner must have household income for the calendar year before January 1 at or below the limit for that owner's household type and number (see below for formula).**  
For property subject to trust, each co-trustee must meet income standard.

#### Calculation of Each Owner's Household Income

1. **Household Annual Gross Income from all sources.**
  - Includes wages, salaries and bonuses, public and private pensions, retirement income, Social Security, alimony, child support, interest and dividend income, net income from business, public assistance, disability and unemployment insurance, regular contributions/gifts from party outside the household.
  - Includes income of all household members who were 18 or older and not full time students during calendar year.
  - Does not include income imputed to income producing assets that do not actually produce income.
  - Does not include amounts received by an applicant pursuant to a reverse mortgage.
2. **Deduct Dependents Allowance.**
  - Number dependents on January 1 (not spouse) x \$ DCHD allowance.\*
3. **Deduct Medical Expenses Exclusion.**
  - Total out of pocket medical expenses of all household members for calendar year exceeding 3% of household annual gross income (from line 1 above).
  - Out of pocket medical expenses include health insurance premiums, payments to doctors, hospitals and other health care providers, diagnostic tests, prescription drugs, medical equipment or other expenses not paid or reimbursed by employers, public/private insurers or other third parties.
4. **Equals Household Annual Income for CPA Exemption.**
  - Cannot exceed *Annual Income Limit for Household Type and Size*.

\* Currently \$300. Available from [760 Code of Massachusetts Regulations 6.05\(4\)\(b\)](#).

**Attachment II-1 (continued)**

**COMMUNITY PRESERVATION SURCHARGE  
LOW/MODERATE INCOME EXEMPTION**

**Annual Income Limit by Household Type and Size**  
**US HUD AWMI = Area wide median income\*\* issued by HUD**  
**Round all calculations to nearest \$50.00**

**Household Type: Property owned by senior (60 or older)**

<b>Household Size</b>	<b>Annual Income Limit</b>
1	$(1.00 \times \text{US HUD AWMI}) \times .70$
2	$(1.00 \times \text{US HUD AWMI}) \times .80$
3	$(1.00 \times \text{US HUD AWMI}) \times .90$
4	$(1.00 \times \text{US HUD AWMI})$
5	$(1.00 \times \text{US HUD AWMI}) \times 1.08$
6	$(1.00 \times \text{US HUD AWMI}) \times 1.16$
7	$(1.00 \times \text{US HUD AWMI}) \times 1.24$
8	$(1.00 \times \text{US HUD AWMI}) \times 1.32$

**Household Type: Property owned by non-senior (under 60)**

<b>Household Size</b>	<b>Annual Income Limit</b>
1	$(.80 \times \text{US HUD AWMI}) \times .70$
2	$(.80 \times \text{US HUD AWMI}) \times .80$
3	$(.80 \times \text{US HUD AWMI}) \times .90$
4	$(.80 \times \text{US HUD AWMI})$
5	$(.80 \times \text{US HUD AWMI}) \times 1.08$
6	$(.80 \times \text{US HUD AWMI}) \times 1.16$
7	$(.80 \times \text{US HUD AWMI}) \times 1.24$
8	$(.80 \times \text{US HUD AWMI}) \times 1.32$

**\*\*Available at <http://www.huduser.org/portal/datasets/il.html>. Click the applicable fiscal year, and then under “Median Family Incomes”, click “Median Family Documentation” for the fiscal year. Then “click here” button MFI Documentation for FY. Select Massachusetts under “Select a state”, and then select your city or town and county. Then, “View County Calculations” for the Median Family Income for your city or town. Insert this number for “US HUD AWMI” in chart above.**

## Attachment V-1

# COMMUNITY PRESERVATION FUND PROJECT EXPENDITURE EXAMPLES

## I. COMMUNITY PRESERVATION ASSET CATEGORIES

The three community preservation (CP) asset categories are: (1) open space (including land for recreational use); (2) historic resources; and (3) community housing. In each asset category, CP funds may be appropriated for the following projects.

### A. Open Space

1. The acquisition, creation and preservation of open space.
2. The rehabilitation or restoration of open space; provided the open space was acquired or created with community preservation funds.

### B. Land for Recreational Use

The acquisition, creation, preservation, rehabilitation and restoration of land for recreational use.

### C. Historic Resources

The acquisition, preservation, rehabilitation and restoration of historic resources.

### D. Community Housing

1. The acquisition, creation, preservation and support of community housing.
2. The rehabilitation or restoration of community housing; provided the housing was acquired or created with community preservation funds.
3. Appropriations to a municipal affordable housing trust fund created by a municipality pursuant to [G.L. c. 44, § 55C](#); however, the affordable housing trust may expend CP funds only for allowable community housing project purposes described in sections (1) and (2) above. [G.L. c. 44, §§ 55C\(a\), \(c\)\(1\)](#).

Whenever possible, the Community Preservation Committee (CPC) should recommend projects that reuse existing buildings or construct new buildings on previously developed sites. [G.L. c. 44B, § 5\(b\)\(2\)](#).



## II. EXPENDITURE EXAMPLES

The following are examples of allowable expenditures of CP funds. The below listing is not all-inclusive.

### A. Open Space

“Open space” for CP purposes is defined in [G.L. c. 44B, § 2](#) as “includ[ing], but not be limited to, land to protect existing and future well fields, aquifers and recharge areas, watershed land, agricultural land, grasslands, fields, forest land, fresh and salt water marshes and other wetlands, ocean, river, stream, lake and pond frontage, beaches, dunes and other coastal lands, lands to protect scenic vistas, land for wildlife or nature preserve and land for recreational use.”

- Acquisition – Acquisition of real property or an interest in real property is allowable for open space purposes, including the acquisition of agricultural land, grasslands, fields, forest land, watershed land, fresh and salt water marshes and other wetlands, ocean, river, stream, lake and pond frontage, beaches, dunes and other coastal lands, land to protect scenic vistas, land for wildlife or a nature preserve, land for recreational use and land to protect existing and future well fields, aquifers and recharge areas. The price of the acquisition must not exceed the value of the property as determined through “procedures customarily accepted by the appraising profession as valid.” [G.L. c. 44B, § 5\(f\)](#). The city or town must own any real property interest acquired with community preservation monies. Management of the properties may be delegated by the legislative body to the conservation commission, historical commission, park commission or housing authority, as appropriate, or to a nonprofit corporation created under [G.L. c. 180](#) or nonprofit trust created under [G.L. c. 203](#). [G.L. c. 44B, § 12\(b\)](#). Real property interests financed in whole or in part with CP Fund monies must be bound by a permanent restriction which conforms to the requirements of [G.L. c. 184, §§ 31-34](#). [G.L. c. 44B, § 12](#). The restriction must be enforceable by the city or town or the Commonwealth. It may also run to the benefit of and be enforced by a nonprofit, charitable corporation or foundation selected by the city or town. Funding may be appropriated from the CP Fund to pay a nonprofit organization created under [G.L. c. 180](#) to hold, monitor and enforce the restriction on the property. [G.L. c. 44B, § 12](#).
- Acquisition - Appropriation of CP funds to a conservation fund established by [G.L. c. 40 § 8C](#) is allowable; however, any expenditure of such funds remains subject to the restrictions imposed by the CPA, including the requirement that any land acquired must be bound by a restriction described in [G.L. c. 44B, § 12](#). Therefore, the conservation commission may spend CPA funds only for those purposes that are authorized by both [G.L. c. 40 § 8C](#) and the CPA, for example, acquisition of land for open space purposes. To ensure that these requirements are carried out, the CPC recommendation and any legislative body appropriation vote should expressly include these conditions.

- Rehabilitation – Expenditures for rehabilitation and restoration of open space (not including lands for recreational use) are not allowable unless the open space was acquired or created pursuant to [G.L. c. 44B, § 5\(b\)\(2\)](#). For example, funding is allowable for rehabilitation of municipal forest land, provided the forest land was acquired with community preservation funds. CP funds cannot be used, however, to fund any expenditure that would fall within the CPA definition of “maintenance,” even if the expenditure is required by a forest management plan. [G.L. c. 44B, §§ 2 and 5\(b\)\(2\)](#).

## **B. Land for Recreational Use**

“Recreational use” for CP purposes is defined in [G.L. c. 44B, § 2](#) as “active or passive recreational use including, but not limited to, the use of land for community gardens, trails, and noncommercial youth and adult sports, and the use of land as a park, playground or athletic field. ‘Recreational use’ shall not include horse or dog racing or the use of land for a stadium, gymnasium or similar structure.” The CPA definition limits recreational use to an outdoor recreational pursuit.

- Acquisition – Acquisition of land for recreational use is allowable. See Acquisition of Open Space above.
- Rehabilitation - Capital improvements, as defined in [G.L. c. 44B, § 2](#), to municipally-owned recreation land that make the land or related recreational facilities more functional for their intended outdoor recreational use are allowable including, but not limited to, installation of trails for walking, hiking, horseback riding or skiing; installation of water lines and pathways in community gardens; installation of irrigation lines for athletic fields; and installations or replacements of outdoor playground equipment.
- Purchase of tennis rackets, basketballs, golf carts and other recreational equipment is not allowable because the expenditure does not acquire, create, preserve, rehabilitate or restore any land for recreational use.
- Installation of bleachers at an athletic field is not allowable because recreational use under the CPA does not include use of land for a stadium or similar structure. [G.L. c. 44B, § 2](#).
- Rehabilitation - Installation of restrooms for the use of a municipally-owned outdoor recreational facility such as athletic fields or a swimming pool is allowable as rehabilitation of land for recreational use, provided the restrooms make the land or related recreational facilities more functional for the intended outdoor recreational use. However, the use of CP funds for the installation of restrooms in a building or facility that primarily serves purposes unrelated to the outdoor recreational purpose is not allowable.

- Acquisition, Creation and Rehabilitation - Funding for rehabilitation (capital improvements or extraordinary repairs) of an outdoor swimming pool owned by a private nonprofit organization in exchange for the municipality's receipt of a public recreational use restriction and easement for the public's use of the swimming pool is allowable if it does not violate the *Anti-aid Amendment*. In this example, if the municipality had not required a public recreational use restriction and easement for the public's use in exchange for the CPA funding, the expenditure would likely not satisfy the three-factor test that the courts have established to determine allowable expenditures under the *Anti-aid Amendment*. (See IGR Section V-C-5 above, for information regarding the *Anti-aid Amendment*.) A grant agreement with the grant recipient should also be required to ensure grant funds are expended for the approved CP purpose. (For more information on grant agreements, see IGR Section V-B-2-e above.)
- Creation – Funding for the construction of non-commercial athletic fields, outdoor tennis and basketball courts, golf courses and outdoor swimming pools on municipal land is allowable as creation of lands for recreational use.
- Creation – Funding for the installation of soccer fields, including water lines for irrigation, on land owned by a private boosters club is allowable provided the municipality obtains a public recreational use restriction and easement commensurate with its expenditure of CPA funding. (See IGR Section V-C-5 above, for information regarding the *Anti-aid Amendment*.) A grant agreement with the grant recipient should also be required to ensure grant funds are expended for the approved CP purpose. (For more information on grant agreements, see IGR Section V-B-2-e above.)
- Funding for construction (creation) of a new indoor community recreational facility or to rehabilitate an existing indoor community recreational facility is not allowable because an indoor community recreational facility is not within the CPA definition of “recreational use” as it houses indoor recreational uses and is similar to a gymnasium. [G.L. c. 44B, § 2.](#)
- Funding for a feasibility study or engineering or other studies for a new indoor community recreational facility or to rehabilitate an existing indoor community recreational facility is not allowable because the project itself is not eligible for CPA funding. Nor would funding for such studies be allowable under the CPC's administrative and operating budget to enable the CPC to determine whether to recommend funding for the project because the project itself is not eligible for funding under the CPA. If the project itself is not eligible for CP funding, then funding to study or plan the project is also not allowable.
- Funding for the installation of a paved “pathwalk” is not allowable when the “pathwalk” is in the nature of a functional sidewalk and not a “trail”

within the CPA definition of “recreational use.” *Mauch v. Town of Norwell*, Plymouth Superior Court No. PLCV2015-00517, Order on Motion for Summary Judgment, December 18, 2015.

### C. Historic Resources

“Historic resources” for CP purposes is defined in [G.L. c. 44B, § 2](#) as a “building, structure, vessel real property, document or artifact that is listed on the state register of historic places or has been determined by the local historic preservation commission to be significant in the history, archeology, architecture or culture of a city or town.”

- Rehabilitation and Restoration - Funding is allowable for the rehabilitation of a historically significant municipally-owned building listed on the state register of historic places, provided the expenditure falls within the CPA definition of “rehabilitation,” is not within the CPA definition of “maintenance” and the work complies with the Standards for Rehabilitation stated in the U.S. Secretary of the Interior’s Standards for the Treatment of Historic Properties. [G.L. c. 44B, § 2](#).
- Acquisition, Rehabilitation and Restoration - Funding is allowable for rehabilitation of the exterior of a building designed by H.H. Richardson, located on Main Street, owned by a nonprofit, is much-photographed and a prominent feature of the downtown and has been determined by the local historic preservation commission to be “significant in the history, archaeology, architecture or culture” of the city or town, in exchange for the municipality’s receipt of a historic preservation restriction from the nonprofit, provided the expenditure falls within the CPA definition of “rehabilitation,” is not “maintenance” and the work complies with the Standards for Rehabilitation stated in the U.S. Secretary of the Interior’s Standards for the Treatment of Historic Properties and provided the grant does not violate the *Anti-aid Amendment*. (See IGR Section V-C-5 above for information regarding the *Anti-aid Amendment*. See also IGR Section V-B-2-e above, for information on grant agreements.)
- Acquisition, Rehabilitation and Restoration – Funding to restore or rehabilitate religious-content stained glass windows of an active church building (within the CPA definition of historic resource) in exchange for conveyance of a historic preservation restriction to the municipality is not allowable because such funding is in violation of the *Anti-aid Amendment*. [Caplan v. Acton](#), 479 Mass. 69 (2018). In applying the three-part test, the court determined: (i) the stated purpose of the proposed grant was for historic preservation and there was insufficient evidence to demonstrate a hidden purpose to aid the church; (ii) the effect of the grant would be to substantially aid the church; and (iii) the grant would not avoid the political and economic abuses which prompted the passage of the *Anti-aid Amendment*. After weighing and balancing the three factors, the court concluded that even if the sole motivating purpose of the grant was to preserve historic resources, “the other factors in our analysis – especially

the third factor, to which we accord special weight – still compel the conclusion that the stained glass grant runs afoul of the anti-aid amendment.” [Caplan](#), 479 Mass at 95-96.

Acquisition, Rehabilitation and Restoration - Funding for a loan program established by by-law or ordinance to fund rehabilitation work on privately-owned historically significant buildings (falling within the CPA definition of “historic resources”) in exchange for the city/town’s receipt of a historic preservation restriction on the property is allowable provided the loan does not violate the *Anti-aid Amendment*. (See IGR Section V-C-5 above, for information regarding the *Anti-aid Amendment*.) The loan repayments must be credited to the CP Fund. [G.L. c. 44B, § 7\(iii\)](#). And, at the end of the fiscal year, the loan repayments will become part of the CP Fund Balance which will be available as a financing source for appropriation after the accounting officer closes the municipal accounts for the previous fiscal year and determines the amount of the CP Fund Balance. (Municipalities should seek advice from their local counsel regarding the documentation needed to implement such a program.)

- Rehabilitation - Painting that is an integral part of a larger, eligible rehabilitation or restoration project, i.e., painting after extraordinary repairs or restoration of walls, woodwork, trim or siding (etc.) is allowable. However, periodic painting or repainting of a historic building on a recurring basis would be in the nature of “maintenance” and not be eligible for CPA funding.
- Restoration – Painting to restore a historic building to its original historic color is allowable. For example, a historic building originally painted yellow was painted purple in the 1970s. In this case, restoring the building to its historic yellow color is not periodic or recurring painting and is not "maintenance." However, repainting the building yellow in a few years after its original painting would be “maintenance” and is not allowable.
- Preservation - Funding to move a historic lighthouse, within the CPA definition of “historic resource,” away from the edge of an ocean bluff that is eroding due to ocean wave and storm action such that the lighthouse is in danger of falling into the ocean, is an allowable CPA expenditure for the purpose of “preservation.” “Preservation” is defined narrowly in [G.L. c. 44B, § 2](#) as “protection of personal or real property from injury, harm or destruction.” If the lighthouse is owned by a nonprofit, legal counsel should be consulted to ensure that the *Anti-aid Amendment* is not violated. (See IGR Section V-C-5 above, for information regarding the *Anti-aid Amendment*.) A historic preservation restriction running to the municipality should be required to ensure the continued preservation of the lighthouse which was the purpose of the CPA expenditure.
- Funding for an inventory of historic buildings within the municipality is not allowable as a CP project expenditure because an inventory is not a “historic resource” under the CPA definition. However, preparing the

inventory may be fundable, in whole or in part, under the CPC's administrative and operating budget if the inventory will assist the CPC in performing its statutory duties, including reviewing the community's community preservation "needs, possibilities and resources." [G.L. c. 44B, § 5\(b\)\(1\)](#). (See IGR Section V-B-1 above, Community Preservation Fund Expenditures, Annual Administrative and Operating Expenses of the CPC, for more information.)

- A document on file at the municipal clerk's office is not a historic resource under the CPA unless the document has been determined by vote of the local historic preservation commission to be "significant in the history, archeology, architecture or culture of a city or town." [G.L. c. 44B, § 2](#). For example, the birth record of Benjamin Franklin or the municipality's original charter could be determined by the local historic preservation commission to be "significant in the history, archeology, architecture or culture of a city or town."
- If a municipal document is determined by vote of the local historic preservation commission to be "significant in the history, archeology, architecture or culture of a city or town," then CP funding is allowable for the "acquisition, preservation, rehabilitation and restoration" of the physical document. For example, CPA funding could be used to de-acidify the paper, repair tears, remove harmful films and residues and encase the document in protective mylar. These expenditures would be allowable as "restoration" or "preservation" of the historic resource – the document.
- Funding for cataloguing, indexing, scanning, digitizing, transcribing or otherwise preserving the information content of municipal documents rather than preserving or restoring the physical historic resource itself, is not allowable. The historic document is the "historic resource."
- Funding for the codification of a municipality's by-laws or ordinances is not allowable because the expenditure does not acquire, preserve, rehabilitate or restore a "historic resource" under the CPA definition.
- Funding to research and write a history of the municipality is not an allowable expenditure because the expenditure does not acquire, preserve, rehabilitate or restore a "historic resource" under the CPA definition.
- Funding for the acquisition, preservation, rehabilitation or restoration of replicas of historic resources is not allowable because "replicas" are not within the CPA definition of historic resource.

#### **D. Community Housing**

- Acquisition and Creation - Funding for the municipality to acquire condominium units to be rented or later sold to income-eligible persons is



allowable, provided the units are made subject to an affordable housing restriction to be held by the municipality. [G.L. c. 44B, § 12](#). The proceeds of any rental or sale would be credited to the CP Fund. [G.L. c. 44B, § 7\(iv\)](#).

- Acquisition and Creation - Funding for the municipality to acquire affordable housing restrictions on properties where restrictions have expired or are about to expire is allowable. [G.L. c. 44B, § 12](#).
- Creation - Funding for the construction of affordable housing units that will be subject to an affordable housing restriction held by the municipality pursuant to [G.L. c. 44B, § 12](#) in a mixed-use development is allowable, provided the community preservation funds are used only for the affordable units and for the proportionate share of costs incidental to creating the affordable housing on the site, i.e., site surveys, environmental assessments, architectural and engineering fees, permit processing fees, legal and accounting fees, and similar expenses that are typically included in an appropriation for a municipal construction project.
- Acquisition and Creation - Funding for a Habitat for Humanity affordable housing project creating housing units that will be subject to an affordable housing restriction running to the municipality is allowable.
- Acquisition and Creation - Funding for a program to assist income-eligible persons make a down payment on a home in return for the municipality's acquisition of an affordable housing restriction on the unit is allowable.
- Rehabilitation - Funding for "rehabilitation" as defined in [G.L. c. 44B, § 2](#) - capital improvements or extraordinary repairs to community housing, including replacement of kitchen cabinets, flooring, windows, doors and roof, a fire alarm upgrade and improvements to comply with the Americans with Disabilities Act - is allowable provided the property to be rehabilitated was acquired or created with community preservation funds and provided the work is not within the CPA definition of "maintenance." If the property was not acquired or created with community preservation funds, CPA funding for "rehabilitation" is not allowable. [G.L. c. 44B, §§ 2, 5\(b\)\(2\)](#). If allowable, but the property is not municipally-owned, then municipal counsel should be consulted to ensure that the *Anti-aid Amendment* is not violated, whether an affordable housing restriction should be required and to determine grant agreement terms. (See IGR Section V-C-5 above, for information regarding the *Anti-aid Amendment* and IGR Section V-B-2-e above, for information on grant agreements.)
- Support - By definition, expenditures in "support of community housing" must be "for the purpose of making housing affordable". [G.L. c. 44B, § 2](#). As a result, the housing asset itself must be made affordable by the expenditure.

- Support – CP funding is allowable for the following rental assistance program. A municipality enters into an agreement with a nonprofit or local housing authority (LHA) to manage a rental assistance program where the nonprofit/LHA finds landlords with suitable units to participate in the program and income-eligible tenants seeking affordable housing. The program documents include two co-terminus contracts: (1) a housing assistance payment contract (contract) between the landlord and the nonprofit/LHA and (2) a lease between the landlord and the income-eligible individual (tenant). The lease requires that the tenant pay the landlord an “affordable” or “reduced” rent for the lease term. The contract requires the nonprofit/LHA to pay the landlord a rental assistance payment while the tenant occupies the unit. When added together, the total amount of the lease payment and rental assistance payment to the landlord will be equal to a fair market rent for the unit. The allowable costs of the program include the management fee to the nonprofit or LHA and the housing assistance payments to the landlords that participate in the program.

In this example, the housing unit is made affordable by the expenditure during the term of the contract with the landlord and the lease for the unit. In addition, funding would also be allowable for a last month’s rent and/or security deposit paid to a landlord pursuant to a contract and lease under the above program, both of which are returnable to the CP Fund at the end of the lease/contract term. The payments by the municipality to the nonprofit or LHA to manage the rental assistance program would not be a violation of the *Anti-aid Amendment* because the payments are in exchange for management services provided by the nonprofit or LHA under the agreement. See [Commonwealth v. School Committee of Springfield](#), 382 Mass. 665 (1981). (Municipalities should seek advice from their local counsel regarding the documentation needed to implement such a program.)

- Funding for an affordable housing needs assessment is not allowable as a CP project expenditure because it does not acquire, create, preserve, rehabilitate, restore or support any particular housing asset. However, the needs assessment is fundable under the CPC’s administrative and operating budget if it will assist the CPC in performing its statutory duties. (See IGR Section V-B-1 above, for more information on annual operating expenditures of the CPC.)
- Funding to a nonprofit to provide housing counseling and foreclosure prevention services to income-eligible individuals would not be an allowable expense as “support” of community housing because a housing asset is not made affordable by the expenditure. Nor would the expenditure be allowable as “acquisition,” “creation” or “rehabilitation” of community housing. It also would not be allowable as “preservation” of community housing because “preservation” is narrowly defined as “protection of personal or real property from injury, harm or destruction.” [G.L. c. 44B, § 2.](#)



- An appropriation to a municipal affordable housing trust fund created by a municipality pursuant to [G.L. c. 44, § 55C](#) is allowable. Such appropriations, however, are expendable by the affordable housing trust fund only for allowable community housing project purposes under [G.L. c. 44B, § 5\(b\)\(2\)](#) – acquisition, creation, preservation and support of community housing and rehabilitation or restoration of community housing acquired or created with community preservation funds. [G.L. c. 44, § 55C\(a\),\(c\)\(1\)](#). If a community desires to appropriate funds to its municipal affordable housing trust fund for a specific project, for example, the rental assistance program described above, the CPC’s recommendation and the legislative body’s appropriation vote should restrict the use of the funds for that particular project.

**ATTACHMENT V-2 - COMMUNITY PRESERVATION FUND ALLOWABLE PROJECT SPENDING PURPOSES (G.L. c. 44B, § 5)**

	<b>OPEN SPACE</b>	<b>HISTORIC RESOURCES</b>	<b>RECREATIONAL LAND</b>	<b>COMMUNITY HOUSING</b>
	Land to protect existing and future well fields, aquifers and recharge areas, watershed land, agricultural land, grasslands, fields, forest land, fresh and salt water marshes and other wetlands, ocean, river, stream, lake and pond frontage, beaches, dunes and other coastal lands, lands to protect scenic vistas, land for wildlife or nature preserve and land for recreational use	Building, structure, vessel, real property, document or artifact listed on the state register of historic places or determined by the local historic preservation commission to be significant in the history, archeology, architecture or culture of the city or town	Land for active or passive recreational use including, but not limited to, the use of land for community gardens, trails, and noncommercial youth and adult sports, and the use of land as a park, playground or athletic field  Does <u>not</u> include horse or dog racing or the use of land for a stadium, gymnasium or similar structure	Housing for low income individuals and families and low or moderate income seniors  Moderate income is less than 100%, and low income is less than 80%, of US HUD Area Wide Median Income
<b>ACQUISITION</b> - Obtain property interest by gift, purchase, devise, grant, rental, purchase, lease or otherwise. Only includes eminent domain taking as provided by G.L. c. 44B	Yes	Yes	Yes	Yes
<b>CREATION</b> - Bring into being or cause to exist. <i>Seideman v. City of Newton</i> , 452 Mass. 472 (2008)	Yes	X	Yes	Yes
<b>PRESERVATION</b> - Protect personal or real property from injury, harm or destruction	Yes	Yes	Yes	Yes
<b>SUPPORT</b> - Programs providing grants, loans, rental assistance, security deposits, interest-rate write downs or other forms of assistance directly to individuals and families who are eligible for community housing, or to entity that owns, operates or manages it, <u>for the purpose of making the housing affordable</u>	X	X	X	Yes, provided the housing asset itself is made affordable by the expenditure
<b>REHABILITATION AND RESTORATION</b> - Capital improvements, or extraordinary repairs to make assets functional for intended use, including improvements to comply with federal, state or local building or access codes or federal standards for rehabilitation of historic properties	Yes, if open space asset acquired or created with CP funds	Yes, provided that rehabilitation complies with Secretary of Interior's Standards for Treatment of Historic Properties	Yes (includes replacement of playground equipment)	Yes, if housing asset acquired or created with CP funds
<b>APPROPRIATIONS TO AFFORDABLE HOUSING TRUST G.L. c. 44, § 55C</b>	X	X	X	Yes; however, trust is required to spend CPA funds for CPA community housing purposes.
Maintenance expenditures are prohibited for all assets even if they could otherwise be considered acquisition, creation, preservation, support, rehabilitation or restoration Maintenance means incidental repairs that do <u>not</u> materially add to value of property or appreciably prolong property's life, but keep property in condition of fitness, efficiency or readiness				

### ATTACHMENT V-3

## CPA PROJECT ELIGIBILITY FLOW-CHART

Refer to CPA definitions under [G.L. c. 44B, § 2](#) for words in *italics*.

1	<p>-Does the expenditure provide funding to an affordable housing trust? If YES, go to 3.</p> <p>-Does the expenditure relate to one of the three community preservation assets – (1) <i>open space</i>, including land for <i>recreational use</i>; (2) <i>historic resources</i>; (3) <i>community housing</i>? If YES, go to 2. If NO, the expenditure is not eligible for CPA funding.</p>
2	<p>-If the expenditure is related to <i>open space</i> but not to land for <i>recreational use</i>, go to 4.</p> <p>-If the expenditure is related to land for <i>recreational use</i>, go to 6.</p> <p>-If the expenditure is related to a <i>historic resource</i>, go to 7.</p> <p>-If the expenditure is related to <i>community housing</i>, go to 8.</p>
3	<p>A city or town may appropriate money in any year from the Community Preservation Fund (CP Fund) to an affordable housing trust fund under <a href="#">G.L. c. 44, § 55C</a>. The trust must spend CPA funds for an allowable CP community housing purpose. Start at 8 below for determining allowable expenditures.</p>
4	<p>-Does the expenditure <i>acquire</i>, create or <i>preserve</i> open space?</p> <p>-If YES, the expenditure is eligible for CPA funding. But, go to 10 if the asset is owned by a nonprofit, private entity or individual.</p> <p>-If NO, does the expenditure <i>rehabilitate</i> or restore open space? If YES, go to 5.</p> <p>-If NO, the expenditure is not eligible for CPA funding.</p>
5	<p>-Was the <i>open space acquired</i> or created with CPA funds?</p> <p>-If YES, the expenditure is eligible for CPA funding. But, go to 10 if the asset is owned by a nonprofit, private - entity or individual.</p> <p>-If NO, the expenditure is not eligible for CPA funding.</p>
6	<p>-Does the expenditure <i>acquire</i>, create, <i>preserve</i>, <i>rehabilitate</i> or restore land for <i>recreational use</i>?</p> <p>-If YES, the expenditure is eligible for CPA funding. But, go to 10 if the asset is owned by a nonprofit, private entity or individual.</p> <p>-If NO, the expenditure is not eligible for CPA funding.</p>
7	<p>-Does the expenditure <i>acquire</i>, <i>preserve</i>, <i>rehabilitate</i> or restore a <i>historic resource</i>?</p> <p>-If YES, the expenditure is eligible for CPA funding. But, go to 10 if the asset is owned by a nonprofit, private entity or individual.</p> <p>-If NO, the expenditure is not eligible for CPA funding.</p>
8	<p>-Does the expenditure <i>acquire</i>, create, <i>preserve</i> or <i>support community housing</i>?</p> <p>-If YES, the expenditure is eligible for CPA funding. But, go to 10 if the asset is owned by a nonprofit, private entity or individual.</p> <p>-If NO, does the expenditure <i>rehabilitate</i> or restore <i>community housing</i>? If YES, go to 9.</p> <p>-If NO, the expenditure is not eligible for CPA funding.</p>
9	<p>-Was the <i>community housing acquired</i> or created with CPA funds?</p> <p>-If YES, the expenditure is eligible for CPA funding. But, go to 10 if the asset is owned by a nonprofit, private entity or individual.</p> <p>-If NO, the expenditure is not eligible for CPA funding.</p>
10	<p>The <i>Anti-aid Amendment to the Massachusetts Constitution, Mass. Const. Amend. Article 42, § 2</i>, as amended by Article 103, restricts grants of public funds to private organizations. A three-factor test to determine the constitutionality of grants challenged under the <i>Anti-aid Amendment</i> has been developed by the court: (i) whether the proposed grant is for the purpose of founding, maintaining or aiding [the institution, private organization, nonprofit, church, etc.]; (ii) whether the effect of the grant is to substantially aid [the institution, private organization, nonprofit, church, etc.]; and (iii) whether the grant avoids the political and economic abuses which prompted the passage of the <i>Anti-aid Amendment</i>. <a href="#">Commonwealth v. School Comm. of Springfield</a>, 382 Mass. 665, 675 (1981). <a href="#">Caplan v. Acton</a>, 479 Mass. 69 (2018). Massachusetts case law likewise prohibits gratuitous payments, gifts or grants of public funds (which include CPA funds) to individuals. <a href="#">Opinion of the Justices, 313 Mass. 779, 784 (1943)</a>. Consult with municipal counsel whenever these grants are being considered.</p>

**ATTACHMENT VI - 1 CHART - COMMUNITY PRESERVATION FUND FINANCING SOURCES**

	ANNUAL FUND REVENUES		FUND BALANCE	BUDGETED RESERVES	BORROWING
	CPA ADOPTION - <a href="#">G.L. c. 44B, § 3(b)</a> (Traditional Surcharge)	CPA ADOPTION - <a href="#">G.L. c. 44B, § 3(b<sup>1/2</sup>)</a> - Surcharge + Alternative Annual Financing Sources (Blended Surcharge)			
<b>Definition / Source</b>	Annual recurring revenues. - Surcharges (up to 3%) assessed for FY. - State trust fund distribution received during FY (beginning in 2 <sup>nd</sup> year of fund operation and based upon surcharge assessed in previous FY).	Annual recurring revenues - Surcharges (at least 1%) assessed for FY. - Appropriations from other municipal financing sources to the CP Fund made from the tax levy (general fund) before the tax rate set or from available funds until 6/30. (Cannot exceed 2% of the year's tax levy and, when added to the surcharge, the total cannot exceed 3% of the tax levy.) - State trust fund distribution received during FY (beginning in 2 <sup>nd</sup> year of fund operation and based upon surcharge assessed in previous FY and additional funds appropriated to the fund)	Unspent funds generated by favorable operations during the previous FY that are available for appropriation. - Appropriation turn-backs, including unappropriated balance annual budgeted reserve. - Actual receipts in excess of budgeted revenues. - Investment interest. - Miscellaneous non-recurring revenues.	- <u>Annual Budgeted Reserve</u> : reserved by legislative body for future appropriation for any CPA purpose during FY. - <u>Special Purpose (restricted) Reserve</u> : reserved by legislative body for future appropriation for one of the three CPA purposes: (1) open space (including recreation), (2) historic resources and (3) community housing.	Debt repaid with future fund revenues.  Proceeds from notes, bonds or other debt obligations issued for a CPA purpose.
<b>Limitations</b>	- Legislative body <i>must</i> spend or reserve 10% of each year's annual revenues for each CPA purpose: (1) open space (including recreation), (2) historic resources and (3) community housing. - Cannot spend from appropriations from revenues until FY begins ( <i>i.e.</i> , 7/1).	- See "Traditional Surcharge" for 10% minimum annual commitments. (Additional funds from other financing sources are annual revenues for purposes of meeting the annual 10% commitments.) - Cannot spend from appropriations <u>from revenues</u> until FY begins ( <i>i.e.</i> , 7/1) - Appropriations from other financing sources require legislative body vote that states the specific dollar amount being appropriated from the tax levy (general fund) or available funds to the community preservation fund. If financing source is restricted, restriction stays with the funds.	May be appropriated by legislative body for any CPA purpose.	Appropriations <i>to</i> a particular reserve require legislative body vote that states the specific dollar amount and source being reserved.  Appropriations <i>from</i> the annual budgeted reserve may be made for any CPA purpose during the FY only and any unappropriated balance at year-end closes to fund balance.  Appropriations <i>from</i> a particular special purpose reserve are limited to that CPA purpose.	Legislative body <i>must</i> specifically vote borrowing under CPA ( <a href="#">G.L. c. 44B, § 11</a> ) and two-thirds vote required ( <a href="#">G.L. c. 44, § 2.</a> )  Borrowing limited in amount to debt service payable from estimated surcharge revenues and, for "blended" surcharge communities, estimated additional revenues pursuant to § 3(b <sup>1/2</sup> ).  Borrowing subject to purpose and term limitations under <a href="#">G.L. c. 44.</a>  Appropriations <i>from</i> proceeds remaining after purpose completed restricted to a CPA purpose for which borrowing may be authorized for same or longer term than original loan. <a href="#">G.L. c. 44, § 20.</a>

**ATTACHMENT VI - 1 CHART - COMMUNITY PRESERVATION FUND FINANCING SOURCES**

	ANNUAL FUND REVENUES		FUND BALANCE	BUDGETED RESERVES	BORROWING
	CPA ADOPTION - <u>G.L. c. 44B, § 3(b)</u> (Traditional Surcharge)	CPA ADOPTION - <u>G.L. c. 44B, § 3(b<sup>1/2</sup>)</u> - Surcharge + Alternative Annual Financing Sources (Blended Surcharge)			
<b>Available to Appropriate</b>	Until tax rate set for FY Once rate set, only CPA available funds (budgeted reserves or fund balance) or borrowing may be used as financing source.	See Traditional Surcharge for "Available to Appropriate" information regarding surcharge revenues. For other financing sources, any time after appropriation into fund if appropriating from available funds (or after 7/1 for appropriations from general fund revenues).	Any time after accounting officer reports prior FY fund activities and balance to DOR until 6/30 close of current FY.	Annual budgeted reserve - during FY ( <i>i.e.</i> 7/1 to 6/30). Special purpose reserves - any time (or after 7/1 for new reservations from annual revenues).	Anytime.
<b>Similarity</b>	General fund annual tax levy (taxes, state aid, receipts).  Enterprise fund annual revenues (user charges and fees).	For surcharge revenues, see Traditional Surcharge "Similarity" information. For additional funds appropriated to the community preservation fund, similarity is with general fund and available funds appropriated into special purpose funds ( <i>e.g.</i> , conservation fund).	Free cash Enterprise fund free cash (retained earnings).	Stabilization fund ( <i>i.e.</i> , general fund monies reserved for later appropriation for municipal purpose). Enterprise fund budgeted surplus.	Other municipal debt.

**ATTACHMENT VI-2 SAMPLE APPROPRIATION VOTE - ANNUAL COMMUNITY PRESERVATION PROGRAM BUDGET**

**ARTICLE:** TO ACT ON THE REPORT OF THE COMMUNITY PRESERVATION COMMITTEE ON THE FISCAL YEAR 20XX COMMUNITY PRESERVATION BUDGET AND TO APPROPRIATE OR RESERVE FOR LATER APPROPRIATION MONIES FROM COMMUNITY PRESERVATION FUND ANNUAL REVENUES OR AVAILABLE FUNDS FOR THE ADMINISTRATIVE EXPENSES OF THE COMMUNITY PRESERVATION COMMITTEE, THE PAYMENT OF DEBT SERVICE, THE UNDERTAKING OF COMMUNITY PRESERVATION PROJECTS AND ALL OTHER NECESSARY AND PROPER EXPENSES FOR THE YEAR, OR TAKE ANY OTHER ACTION RELATIVE THERETO.

**MOTION:** I move that the town vote to appropriate or reserve from Community Preservation Fund annual revenues or available funds the amounts recommended by the Community Preservation Committee for committee administrative expenses, debt service, community preservation projects and other expenses in Fiscal Year 20XX, with each item to be considered a separate appropriation.

**PROPOSED FISCAL YEAR 20XX COMMUNITY PRESERVATION BUDGET**

THE COMMUNITY PRESERVATION COMMITTEE RECOMMENDS THAT THE FOLLOWING AMOUNTS BE APPROPRIATED OR RESERVED FROM FISCAL YEAR 20XX COMMUNITY PRESERVATION FUND REVENUES, UNLESS OTHERWISE SPECIFIED, FOR FISCAL YEAR 20XX COMMUNITY PRESERVATION PURPOSES WITH EACH ITEM CONSIDERED A SEPARATE APPROPRIATION:

<u>ESTIMATED REVENUES FY XX</u>	<u>AMOUNT</u>	
CPA SURCHARGE & 3(b½) REVENUES	\$500,000	
STATE TRUST FUND DISTRIBUTION	100,000	
<b><u>TOTAL ESTIMATED REVENUES</u></b>	<b><u>\$600,000</u></b>	
<b><u>BUDGET FY20XX</u></b>		
<b><u>PURPOSE</u></b>	<b><u>RECOMMENDED</u></b>	<b><u>FUNDING SOURCE (if other than FY annual fund revenues)</u></b>
<b>Appropriations</b>		
Community Preservation Committee Administrative Budget	30,000	
For the acquisition of Green Acre Farm debt service (open space)	\$60,000	
For the rehabilitation of the historic town library (historic preservation)	\$50,000	
<b>Reserves</b>		
<b>Special Purpose (Restricted) Reserves</b>		
Open Space	0	
Historic Resources	\$10,000	
Community Housing	\$60,000	
<b>Undesignated Reserve</b>		
Annual Budgeted Reserve	\$390,000	

**ATTACHMENT VI-3**

**SAMPLE VOTES FROM COMMUNITY PRESERVATION FUND FINANCING SOURCES**

A COMMUNITY MAY CHOOSE TO INCLUDE DEBT SERVICE, COMMUNITY PRESERVATION COMMITTEE AND OTHER EXPENSES TO BE FUNDED FROM COMMUNITY PRESERVATION FUND FINANCING SOURCES IN ITS OMNIBUS BUDGET RATHER THAN IN THE COMMUNITY PRESERVATION BUDGET. IT MAY ALSO MAKE SEPARATE SPECIAL PURPOSE APPROPRIATIONS FROM FUND FINANCING SOURCES DURING THE YEAR. VOTES FROM FUND SOURCES SHOULD BE MADE AS FOLLOWS:

<u><b>SOURCE</b></u>	<u><b>VOTE</b></u>
Annual revenues	<ul style="list-style-type: none"> <li>• To appropriate \$10,000 from FY20XX Community Preservation Fund revenues for _____.</li> <li>• To reserve \$250,000 from FY20XX Community Preservation Fund revenues for FY20XX Community Preservation Fund purposes (FY20XX Annual Budgeted Reserve)</li> <li>• To reserve \$100,000 from FY20XX Community Preservation Fund revenues for Open Space.</li> </ul>
Fund Balance	<ul style="list-style-type: none"> <li>• To appropriate/transfer \$75,000 from Community Preservation Fund balance to _____.</li> </ul>
Annual Budgeted Reserve	<ul style="list-style-type: none"> <li>• To appropriate/transfer \$75,000 from FY20XX Community Preservation Annual Budgeted Reserve to _____.</li> </ul>
Special Purpose Reserves	<ul style="list-style-type: none"> <li>• To appropriate/transfer \$75,000 from Community Preservation Fund Open Space Reserve to _____.</li> </ul>
Excess Bond Proceeds	<ul style="list-style-type: none"> <li>• To appropriate/transfer \$10,000 from Community Preservation – Parcel X Land Acquisition Loan balance to _____.</li> </ul>

## Attachment VII-1

### SAMPLE COMMUNITY PRESERVATION APPROPRIATION VOTE (INCLUDES BORROWING AUTHORIZATION)

ARTICLE: TO SEE IF THE TOWN WILL VOTE TO ACQUIRE BY PURCHASE OR EMINENT DOMAIN A PARCEL OF LAND DESCRIBED AS ASSESSORS MAP 30 LOT 125 CONSISTING OF APPROXIMATELY 25.2 ACRES FOR OPEN SPACE PURPOSES [STATE SPECIFIC CATEGORIES WITHIN OPEN SPACE] UNDER THE COMMUNITY PRESERVATION ACT, AND TO APPROPRIATE OR TRANSFER FROM THE COMMUNITY PRESERVATION FUND ANNUAL REVENUES OR AVAILABLE FUNDS, OR TO AUTHORIZE THE TREASURER WITH THE APPROVAL OF THE SELECTMEN TO BORROW UNDER THE COMMUNITY PRESERVATION ACT, A SUM OF MONEY TO FUND SUCH ACQUISITION AND APPLY ANY NET PREMIUM AND ACCRUED INTEREST RECEIVED AS A RESULT OF SUCH BORROWING TO THE COSTS OF THE PROJECT AND REDUCE THE BORROWING AUTHORIZATION BY THE SAME AMOUNT, AND TO AUTHORIZE THE GRANTING OF A PERMANENT RESTRICTION ON SAID PARCEL PURSUANT TO SECTION 12 OF CHAPTER 44B OF THE GENERAL LAWS OR TAKE ANY OTHER ACTION RELATIVE THERETO.

MOTION: I move that the town authorize the Conservation Commission to purchase a parcel of land described as Assessors Map 30 Lot 125 consisting of approximately 25.2 acres for open space purposes [state specific categories within open space] under the Community Preservation Act and to fund such acquisition, that \$5,000,000 be appropriated with \$400,000 to be appropriated from FY20XX Community Preservation Fund revenues, \$100,000 to be transferred from the Community Preservation Fund Open Space Reserve, \$1,000,000 to be transferred from the Community Preservation Fund balance and that \$3,500,000 be borrowed by the treasurer, who is authorized with the approval of the selectmen, to issue any bonds or notes that may be necessary for that purpose, as authorized by General Laws Chapter 44B, § 11, or any other general or special law, for a period not to exceed the maximum number of years authorized by law and to authorize the treasurer to apply any net premium and accrued interest received as a result of such borrowing to the costs of the project and reduce the borrowing authorization by the same amount and to authorize the granting of a permanent restriction on said parcel pursuant to section 12 of Chapter 44B of the General Laws to the following: [insert identity of proposed holder of restriction here].

(Note - If a specific term for the borrowing is important for community preservation planning purposes, it should be set forth in the Community Preservation Committee's recommendation and the legislative body vote. Two-thirds vote is required for an eminent domain acquisition pursuant to [G.L. c. 44B, § 5\(e\)](#) and for borrowing [G.L. c. 44, § 2](#). The vote should state that the purchase is for specific categories within "open space", rather than just "open space purposes," to avoid later disputes over the uses to be allowed, such as active vs. passive recreation. Town meeting acquisition votes should include authorization for the granting of a permanent preservation restriction. A separate permanent restriction is required for a real property interest acquired with Community Preservation funds. [G.L. c. 44B, § 12.](#))



**Attachment X-1**

**SAMPLE ACCOUNTING ENTRIES**

**1. The legislative body appropriates the following amounts from *estimated revenues*:**

<b>\$300,000</b>	<b>For open space acquisitions</b>
<b>60,000</b>	<b>For open space reserve</b>
<b>60,000</b>	<b>For historic resources reserve</b>
<b>60,000</b>	<b>For community housing reserve</b>
<b>20,000</b>	<b>For committee operating expenses</b>

**In addition, \$100,000 was appropriated from *the Historic Resources Reserve Fund Balance* for the acquisition of a historic site.**

**Accounting entries 1a, 1b, 1c, 1d and 1e are recorded in the Community Preservation Special Revenue Fund. Budgetary entries (1a, 1b and 1c) are illustrated in uppercase to distinguish them from actual entries (1d and 1e).**

**1a. To record estimated revenues budgeted.**

ESTIMATED REVENUE	\$ 500,000	
BUDGETARY CONTROL		\$ 500,000

Subsidiary Ledger

COMMUNITY PRESERVATION SURCHARGE	\$ 500,000	
SUBSIDIARY REVENUE CONTROL		\$ 500,000

**1b. To record amounts appropriated from estimated revenues.**

BUDGETARY CONTROL	\$ 500,000	
APPROPRIATIONS		\$ 500,000

Subsidiary Ledger

SUBSIDIARY APPROPRIATION CONTROL	\$ 500,000	
OPEN SPACE LAND ACQUISITION		\$ 300,000
RESERVE FOR OPEN SPACE		\$ 60,000
RESERVE FOR HISTORIC RESOURCES		\$ 60,000
RESERVE FOR COMMUNITY HOUSING		\$ 60,000
OPERATING EXPENSES		\$ 20,000

**1c. To record amounts appropriated from Historic Resources Reserve Fund Balance.**

BUDGETARY FUND BALANCE	\$	100,000	
APPROPRIATION			\$ 100,000

Subsidiary Ledger

SUBSIDIARY APPROPRIATION CONTROL	\$	100,000	
HISTORIC SITE ACQUISITION			\$ 100,000

**1d. Actual entry to record amounts appropriated to fund balance reserves.**

Unreserved, undesignated Community Preservation Fund Balances	\$	180,000	
Fund balance reserved for open space			\$ 60,000
Fund balance reserved for historic resources			\$ 60,000
Fund balance reserved for community housing			\$ 60,000

**1e. Actual entry to record appropriation from fund balance reserved for historic resource.**

Fund balance reserved for historic resources	\$	100,000	
Fund balance reserved for expenditures			\$ 100,000

**2. The assessors forward a notice of commitment for FY2002 to the accounting officer showing a committed real estate tax of \$2,000 and community preservation surcharge of \$60.**

<u>General Fund</u>			
Real estate tax receivable 2002	\$	2000.	
Deferred revenue property tax			\$ 2000.

<u>Other Special Revenue Fund</u>			
Community preservation surcharge receivable 2002	\$	60.	
Deferred revenue community preservation			\$ 60.

**3. The taxpayer pays the full amount of the bill for \$2,060.**

<u>General Fund</u>			
Cash	\$	2000.	
Real estate tax receivable 2002			\$ 2000.
Deferred revenue property tax Revenue	\$	2000.	
			\$ 2000.

Other Special Revenue Fund

Cash	\$ 60.	
Community preservation surcharge receivable 2002		\$ 60.
Deferred revenue community preservation Revenue	\$ 60.	\$ 60.

4. **Subsequent to the taxpayer paying the bill of \$2,060, the taxpayer applies for an abatement. The assessors grant an abatement of \$500 for the real estate tax and \$15 for the community preservation surcharge.**

General Fund

Overlay 2002	\$ 500.	
Real estate tax receivable 2002		\$ 500.

Other Special Revenue Fund

<i>Deferred revenue community preservation Community preservation surcharge receivable 2002</i>	\$ 15.	\$ 15.
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5. **The collector issues a refund for \$500 for the real estate tax and \$15 for the community preservation surcharge.**

General Fund

Real estate tax receivable 2002	\$ 500.	
Cash		\$ 500.
Revenue	\$ 500.	
Deferred revenue property tax		\$ 500.

Other Special Revenue Fund

<i>Community preservation surcharge receivable 2002 Cash</i>	\$ 15.	\$ 15.
<i>Revenue Deferred revenue community preservation</i>	\$ 15.	\$ 15.